LEGISLATIVE REVIEW PROJECT

SUPPLEMENTARY REPORTS TO THE DIRECTIONS REPORT

PART I - OVERVIEW

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LEGISLATIVE REVIEW PROJECT

SUPPLEMENTARY REPORTS

The following are Supplementary Reports to the Directions Report, which has been submitted to the Ministry of Consumer and Commercial Relations by the Legislative Review Project.

These Supplementary Reports provide the details of the research, consultation and analysis that led to the Directions Report. They also include an extensive summary of the Review Projects proposals: proposals aimed at ensuring a fair marketplace that will benefit Ontario consumers and businesses alike.

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PART I - OVERVIEW

1. Introduction

INTRODUCTION

BACKGROUND

This is a summary of the efforts and results of a one-year major initiative, which was undertaken to develop a new strategy for consumer protection and fair business practices in the marketplace in Ontario.

The mandate for this endeavour was formally declared in the Speech from the Throne (April, 1986):

> "Economic changes have given rise to an increased need for government to update its policies to protect consumers. My government will review statutes and prepare legislation to make them more sensitive to consumer needs and more adaptable to the changing markets and new technologies."

The basis for this commitment came from the realization of the need to significantly update the statutes and regulations which determine how business and consumers interact.

In general, there were many problems with the existing 20 pieces of legislation. The acts varied in age from turn of the century to the mid-1970's, with most enacted during the 1960's and 1970's. Although revisions had occurred, a number of acts had not been reviewed for a decade or longer.

As a result, the legislation in general did not reflect the marketplace complexities of today. Many of the acts were written to resolve problems of the marketplace of 20 or more years ago. A large number of those problems no longer exist. In some cases, those problems have changed so that the statutes are no longer adequate to deal with them.

As well, the legislation was silent in a number of areas facing the consumer in the dynamic marketplace of the 1980's. New technologies, services and commercial marketing approaches had introduced unique challenges to the post-industrial marketplace; challenges that could not have been foreseen 20 years ago. The "average" consumer had also changed in almost every conceivable aspect, and his or her expectations were shifting dramatically too.

Just as important, the statutes did not result from a consistent overall strategy; instead, most represented a collection of individual reactive pieces that were written to deal with specific problems, issues and practices of the day. Therefore, it was essential that a part of any analysis should be the creation of a framework or perspective from which all new proposed direction would flow. This would ensure a consistent view of the marketplace.

Overall, the imbalances among the various statutes, the needto continue to administer outdated statutes and to deal with problems for which there was no appropriate legislation, created a difficult situation for the Ministry, and for the Business Practices Division which administers the legislation.

REALIZATIONS

As a first step to resolving these inadequacies, the Ministry established and set in motion a major review of consumer protection needs. It was called the Legislative Review Project, and formal planning commenced in October 1986 with the hiring of a project director. Funding for the project was received in mid-December of the same year.

The overall purpose of the project was to bring forward proposed direction for changes and improvements needed to assure appropriate consumer protection legislation for the 1980's and beyond.

At the very beginning, there were five general realizations, that provided definition and parameters to the project.

The first has already been briefly mentioned; it is that the project would engage in three major activities:

1) review all 20 pieces of legislation to determine their continued relevance and appropriateness, and the extent of changes required;
2) examine the marketplace to identify and address needs not covered by current legislation;
3) establish a framework, perspective or philosophy with which to test and integrate proposed legislative direction, in order to ensure a consistent and comprehensive view of the marketplace and its participants.

The second realization was that, as a result of the project's proposed direction, two qualitatively different types of legislation would be required in order to ensure a broad, comprehensive and enduring consumer protection strategy; one that would not only meet current fair marketplace needs, but accommodate future requirements as well. One type of legislation - termed foundation - would set generic expectations of the marketplace as well as define a consistent involvement for the government. One early realization by the review team, for example, was that substantial parts of many of the existing acts were duplicated, and at times inconsistent. The opportunity thus existed to review the legislation and "roll-up" these aspects to provide one consistent set of expectations. The future foundation legislation would also incorporate new legislative requirements.

The second type of legislation was referred to as industry-specific, and would be needed to capture any remaining industry unique requirements that the foundation statute(s) could not generically accommodate.

It was tentatively agreed that the final product would not be omnibus legislation; but rather "omnibus-like". This would ensure comprehensive and related legislation, but also reflect the unique elements and requirements of the industries regulated. As well, such a configuration would provide more flexibility if changes were needed in the future.

The third realization was the time commitment. One year was allocated to this entire endeavour. This provided a considerable challenge to the staff of the project and required some thought as to the exact positioning of effort and level of analysis.

The need for the one-year timeframe was obvious. Rapid, broad coverage research, analysis and conclusions were essential to ensure that the direction proposed was as current as possible, and that it reflected present (and anticipated) fair marketplace needs. Otherwise, the project would give direction to deal with a marketplace of the past - the very need for the project in the first place.

The timeframe had a number of implications. Most importantly, it dictated that only a certain level of analysis would be carried out. Very broad and long-term issues could not easily be examined at length, given the time, resources and overall immensity of the task at hand. Still, those issues were studied, and proposed directions were defined. In some cases, recommendations for further study were made.

The fourth realization concerned the manner and extent of the consultations to be carried out with the many and varied affected parties. The project was totally committed to extensive consultation despite the other realizations. The timeframe requirement, in particular, dictated the approaches adopted by the project.

A more detailed overview of the entire consultative process is provided elsewhere in the report. Without overly duplicating, it will be simply stated here that a variety of tools and techniques were employed to solicit information and input depending on the need. Submissions, for example, were requested and received from industry-specific participants, umbrella and industry-specific associations, universities, court systems and so on, in order to gather both detailed and broad input. In many cases, the submissions were followed up by one or more meetings. Others who didn't make formal written submissions communicated with project staff directly. Similarly, consumer input was elicited from surveys and the use of panel discussions, among other vehicles.

In dealing with industry-specific issue areas, input came from many sources, including surveys, briefs, meetings, discussions, and "expert panels".

Also, the Minister's Advisory Committee was created specifically for the project. It met repeatedly during the summer and fall to review and advise on the directions the project team was considering. Guidance from this Committee was particularly relevant in that it had the broader appreciation of the project's components and how they could be integrated as a whole.

The fifth realization was one of practicability. Following the completion of the project and the submission of its proposed direction, what mechanism would be available to continue the thrust toward legislative change? In addition, some "fail-safe" mechanism was needed to ensure that any remaining work could be closed off. Finally, it was argued that the Ministry should develop a proactive and permanent mechanism to continually scan the environment using similar techniques employed by the project. This would ensure the appropriateness of the eventual legislation and propose new direction, when and if required. This latter mechanism, in particular, would make the Ministry proactive rather than reactive in dealing with the Ontario marketplace.

A permanent unit was recommended at the very start of the project to accommodate the above anticipated needs. The recommendation was accepted. Funding was made available for five staff to begin work half-way through the project. These funds were immediately allocated to the Policy and Planning Branch of the Ministry.

THE GENERAL APPROACH

In implementing the project, the entire effort was structured to follow a number of overlapping phases. These phases were implemented sequentially after staffing and many other start-up activities were concluded.

The first set of phases included orientation, in-depth and intensive information-gathering and initial consolidation of results. The research and consultation efforts are described elsewhere in the report. Also, during the initial phases, the development of principles and an overall philosophical framework began. This exercise is also discussed in more detail in the report.

Given the initial information results, and the areas identified for further consideration, project staff were re-organized into teams (continuation of the phased approach). The teams then analyzed the issues and the existing information, conducted further research and consultation, consolidated efforts and prepared proposed directions. At the peak of the project activities, ten teams were active and working in parallel to maximize efficiency. The largest team focussed on foundation issue areas, while the other smaller teams concerned themselves with more industry-specific areas.

Each team member working either individually or in small groups used a number of approaches to gather additional information and insights in the area(s) under review. Those approaches included identifying other jurisdictional practices (primarily in Canada and U.S.A.); engaging in additional specific consultations, both within and outside the government; reviewing papers, articles and other documented direction or critiques; and gathering relevant statistics. Preliminary analysis of issues and possible options and approaches were routinely discussed within the project. However, they were also often shared with outside groups in order to gain a broader appreciation of the area(s) under study, and possible reactions to the options.

At this time, reference must be made to the staff and other resources used to support the project and its work throughout the year. At the peak of the project, more than 30 people were involved full-time in the effort. Most in the total group were "researchers" representing various backgrounds: academically trained consumer research analysts, policy analysts and lawyers in about equal proportion. Support staff and coordinators comprised the remainder of the group. A small minority was made up of civil servants seconded from the Ministry or elsewhere within the Ontario government. The remainder was comprised of contract staff hired specifically for the project.

Also contributing to the project were a large number of professionals drawn from the management consulting, legal, academic and industry-related fields. Such individuals were retained or offered their services freely to provide expert opinion, facilitate activities, contribute research input and expertise, participate in committees and panels, and so on. Their contributions were critical to the completion of the project.

In this context, comment must also be made regarding the working environment. A productive and open atmosphere prevailed which in turn encouraged staff to exercise their freedom to think, discuss, propose and follow any viable avenues.

Ultimately, in the course of the project, more than 40 major discussion papers were prepared offering proposed directions in almost every area of review. Combined with research summary documents, over 4,000 pages of text were prepared.

This report represents only a summary of the year-long work, including both the process used and product that resulted.

2. Overview of the Business Practices Division and its Legislation

OVERVIEW OF THE BUSINESS PRACTICES DIVISION AND ITS LEGISLATION

BACKGROUND

The section attempts to provide the reader with some understanding of the Business Practices Division which administers the 20 pieces of legislation that comprised part of the Legislative Review Project's mandate. The description is based on the division as it was organized and functioning during most of the review time period. As well, this section will briefly list and describe each of the existing 20 pieces of legislation, if for no other reason than to provide some appreciation of the breadth and depth of legislative coverage.

BUSINESS PRACTICES DIVISION

The division receives its direction from the broader Ministry statement of overall purpose, which is to:

> "inform, serve and protect the public, participants, consumers and businesses and to encourage the maintenance of an honest and equitable marketplace."

More operationally, the division views its function as one of ensuring a "level playing field" for both consumers and businesses to interact. This is accomplished primarily through the administration of laws that set expectations for consumer protection and fair business practices in dealing with consumers.

As depicted in the accompanying organization chart, the division is comprised of three branches:

- Consumer Services Branch
- Business Regulation Branch
- Entertainment Standards Branch

The executive director (now assistant deputy minister) of the Business Practices Division provides direction and coordination to the division's three branches and reports directly to the deputy minister. The assistant deputy minister is also responsible for the administration of the newly drafted Prearranged Funeral Services Act and is the Ministry's contact with the Ontario New Home Warranty Program.

a) CONSUMER SERVICES BRANCH

The Consumer Services Branch processes and mediates consumer complaints under all Acts administered by the division, and compiles and analyzes complaint data. This branch also inspects books and records of businesses registered under the various acts administered by the division. The branch operates through the eight Regional Consumer Services Bureaus which are located in Hamilton, London, Ottawa, Peterborough, Sudbury, Thunder Bay, Toronto, and Windsor. Bureaus outside Toronto perform the following functions: complaint handling, inspections, consumer and commercial liaison, and investigative assistance to the Investigations Section.

That section of the Consumer Services Branch is responsible for investigating alleged infractions and enforcing the provisions of all current legislation administered by the Business Practices Division. The legislation that has become a focus of the branch and the division is the Business Practices Act. This act is not industry-specific; rather, it prohibits certain marketplace practices related to false, misleading or deceptive representations and unconscionable practices.

An auto fraud team with the Investigations Section investigates the automobile repair and sales industry to detect odometer turnbacks and unnecessary repairs. "Ghost cars" are used regularly.

b) BUSINESS REGULATION BRANCH

The Business Regulation Branch includes the five registrars of regulated industries and Central Registration. It also regulates all cemeteries in the Province.

The five registrars are as follows:

1) Registrar: Motor Vehicle Dealers Act

The Motor Vehicle Dealers Act requires that all car dealerships and car salesmen register with the Ministry. It also allows the registrar of the act to investigate any alleged infractions and to conduct inspections to ensure that the provisions of the act are being followed.

2) Registrar: Real Estate and Business Brokers Act

The Real Estate and Business Brokers Act requires that all real estate salesmen and brokers be registered with the Ministry. The registrar of the act can, when appropriate, authorize inspections or investigations to ensure that provisions of the act are being followed. This includes checking a broker's trust account and general operations on a regular basis.

3) Registrar: Travel Industry Act

This Act was established to protect consumers buying travel services in Ontario. The act requires all travel agents/

wholesalers to be registered, provides a mechanism to compensate consumers who do not receive paid-for travel services, and sets expectations concerning truth in advertising and educational/expertise requirements for travel agency supervisors.

4) Registrar: Consumer Protection Act

The responsibilities of the registrar who administers the Consumer Protection Act include the registration of itinerant sellers, setting out requirements and rescission rights for executory contracts, and administering and setting requirements for credit transactions.

5) Registrar: Consumer Reporting Act
Paperback and Periodical Distributors Act
Bailiffs Act
Collection Agencies Act
Debt Collectors Act
Discriminatory Business Practices Act

This registrar registers all agencies, distributors and/or brokers. Under these acts, the registrar deals with complaints, authorizes inspections and recommends investigations to ensure compliance with the specific acts. This registrar is also responsible for administering certain aspects of the Condominium Act.

The Central Registration Section of the Business Regulation Branch provides the actual registration functions and maintains a central file of registrants under the following acts: the Consumer Protection Act (registration and bonding of itinerant sellers), the Collection Agencies Act, the Motor Vehicle Dealers Act, the Real Estate and Business Brokers Act, the Travel Industry Act, and the Paperback and Periodical Distributors Act (wholesalers of paperback books and periodicals).

Finally, the Cemeteries Regulation Section, under the Cemeteries Act, regulates cemeteries by either approving, rejecting or revoking establishment or enlargements of cemeteries, crematoria, mausolea and columbaria (structures where human ashes are stored).

c) ENTERTAINMENT STANDARDS

This branch of the division consists of three distinct sections related to various aspects of the entertainment field.

The Theatres section under the Theatres Act licenses motion picture theatres, drive-in theaters, videotape retailers and distributors, and projectionists, as well as commercial projection equipment. The Ontario Film Review Board, which receives its authority from the act, examines, classifies and approves motion pictures and videotapes to ensure they reflect current community standards. The board also reviews and classifies videotapes for sale or rent to the public in Ontario through licenced retailers and distributors.

The Lotteries Section of the branch supervises and controls individuals and groups operating games of chance in Ontario. This section licenses games of chance operated by religious or charitable groups under the gaming sections of the Criminal Code of Canada. The section issues licenses for bingo, raffles, bazaars, break-open Nevada tickets and Monte Carlo nights. As a condition of obtaining a licence, a percentage of the proceeds from these events must be used for charitable purposes.

Finally, the Athletics Commissioner administers the Athletics Control Act and is responsible for the safety and proper conduct of boxing, kickboxing and wrestling in Ontario. The commissioner maintains liaison with community centres and arenas and licenses professional boxers, kickboxers and wrestlers, as well as all officials involved in organizing or participating in these sports.

THE LEGISLATION

Twenty pieces of legislation are administered by the division, and are administratively organized in the manner just described. The chart at the end of this section provides an alternate grouping under general industry areas. Four pieces of legislation are viewed as more generic (that is on-industry-specific) in nature, setting general, more transaction-oriented expectations, as opposed to specific industry direction. The one exception is the Consumer Protection Act, which does provide direction regarding disclosure of credit terms as well as requiring that door-to-door sellers be registered. The descriptions of the acts will be grouped under the heading areas depicted in the chart.

HOME PURCHASES

The Condominium Act is a declaratory piece of legislation which covers the development, sale and on-going management of condominiums. The act introduces the concepts of condominium corporations and condominium ownership, including information regarding the processes involved in the creation, operation and termination of a condominium corporation. The act also strives to create a balance between home ownership and a communal lifestyle.

The Ontario New Home Warranties Plan Act was established by the Ontario government to provide deposit protection and to act as a construction guarantor. The following are among the major provisions of the current act:

1) The consumer deposit is protected up to a maximum of $20,000 in the event the builder does not complete the sale due to bankruptcy.

2) Every builder is required to warrant that the home is free from defects in workmanship and material, is fit to live in and is built in accordance with Ontario Building Code standards. In addition, the builder is required to remedy any defects in workmanship and materials for a period of one year from the date specified in the Warranty Certificate. Structural defects are warranted for a period of four more years.

3) Consumers are protected from financial loss due to defects up to $50,000. Under the act, all builders are registered and pay an enrolment fee for each house they build.

The Real Estate and Business Brokers Act requires the registration of brokers and salespeople trading in real estate, and regulates the practices of such trade. The intent of the act is to ensure that consumers' interests are protected in real estate transactions: unlawful agents may not continue to trade in real estate; deposit funds must be kept secure in trust funds; brokers are responsible for the actions of the salespeople they hire; and agents purchasing property must make adequate disclosures to vendors.

The Residential Complex Sales Representation Act prohibits a person from selling an interest (i.e. a security) in a residential complex (six or more dwelling units), where the purchasers are led to believe that they are acquiring a present or future right to occupy a dwelling unit or exclusive ownership of a dwelling unit, unless the seller actually occupies the dwelling unit being sold or is exempted by regulations.

CREDIT

The Bailiffs Act concerns itself with the appointment of private bailiffs for each county in the province of Ontario. The private bailiff acts as an agent of a creditor who wants to take possession of private property, re-possess purchases and so on.

The purpose of the Collection Agencies Act is to regulate the debt collection practices of collection agencies and their employees. The Act and its regulations set out a list of prohibited practices and methods including:

- collecting monies in addition to the amount owing;
- making harassing telephone calls to the debtor, his spouse, or other family member;

- telephoning to demand payment on a Sunday, statutory holiday, before 7 am and after 9 pm;
- contacting a debtor's employer, except for limited purposes.

Collection agencies must have residency in Ontario. Agencies and their employees must be registered with the registrar in order to carry on business in Ontario, and they must observe bonding, accounting and other requirements. The act grants powers to the registrar, director and Minister to investigate all complaints against agencies or their employees, and to issue cease and desist, restraining and other orders as necessary. Ultimately, the registration of the agency or collector can be reversed, and criminal prosecution initiated.

The Consumer Reporting Act regulates the kind of information a consumer reporting agency can gather and report. It also stipulates how this information can be used, and protects the consumer against the use of outdated and inaccurate information. The main purpose of the act is to ensure consumers' rights to expect responsible conduct from businesses who gather, store, use or disseminate credit and personal information; to know what is being reported about them and to whom it is reported; and to correct inaccurate information about themselves.

The Debt Collectors Act prohibits any person from printing or using an imitation court notice or any other legal forms in order to deceive anyone into believing that the imitation has valid legal authority. Basically, the law seeks to prevent debt collectors and others from threatening debtors with fake legal documents in order to intimidate them into paying money in the belief that they already have been, or soon will be, ordered by the courts to pay.

The Motor Vehicle Dealers Act requires the registration of all motor vehicle dealers and salesmen in the province of Ontario. The regulations under the act require the disclosure of the previous use of certain vehicles (i.e. taxicab or police cruiser), the disclosure of the particulars of sale of all new and used vehicles, and the creation of an industry-sponsored compensation fund to protect consumers who suffer pre-payment losses as a result of non-delivery of vehicles.

TRAVEL SERVICES

The Travel Industry Act was created as a result of the stranding of passengers in foreign countries, where travel agents/wholesalers had not paid in full for airline tickets. In basic terms, the public was in jeopardy of losing services either because some travel agents or wholesalers had ceased to operate or could not otherwise meet their commitments. This act creates a compensation fund which reimburses consumers who have suffered from the failure of a registrant to reimburse a claim. Every agent and wholesaler is required to register and pay into the compensation fund. The fund is administered by a board of trustees appointed by the Minister.

ENTERTAINMENT

The Athletics Control Act provides a mechanism for safeguarding assets, taxing professional boxing and wrestling contests and ensuring the safety and conduct of all participants. It is also the source of authority for the Ontario Athletics Commissioner. The act allows the commissioner to regulate certain sports. The commissioner is provided with powers of investigation and the authority to assess fines for non-compliance. The Minister may also prohibit the use of a building for future boxing and wrestling contests where money payable is not received. Although the act lists 20 specific sports and allows for the commissioner's involvement with amateur sport, present regulation actually exists for only boxing, kickboxing and wrestling.

The Theatres Act gives authority to the Ontario Film Review Board to monitor films intended for public exhibition. The act also licenses and monitors theatres for public safety as well as licensing distributors, exhibitors and projectionists. The Theatre Branch's responsibilities were recently expanded to include the classification and approval of home videos and the licensing of video retailers and distributors. The act also includes regulations for fire and safety requirements.

The Paperback and Periodical Distributors Act is included under the Entertainment area, although administratively it is dealt with by the Business Regulation Branch of the division.

The purpose of the act is to limit foreign ownership of paperback and periodical distributorships. All distributors are registered and business territories defined. The act does not concern itself with the content of any paperback or periodical.

With regard to social gaming, licensing of charitable and religious organizations to operate gaming events was authorized by an amendment to the Criminal Code in 1970. Section 190 of the Code gave provincial governments the authority to license certain forms of gaming if a percentage of proceeds was used for charitable or religious purposes. The following Orders-in-Council (OIC) serve as the authority upon which the licensing program is administered.

> OIC 70/70 - authorizes the Lotteries Branch, under the supervision of the Ministry of Consumer and Commercial Relations, to administer the licensing program.

OIC 274/70 - designates authority to municipalities to issue licenses for some lottery events under certain prize limits; creates terms and conditions to ensure consistency and fairness in the licensing process; and sets guidelines for defining charitable object and purpose.

OIC 2797/82 - approves administrative guidelines requiring that no more than 15% of gross receipts be allocated to expenses and that at least 20% of the funds raised be used for charitable purposes.

Presently, no Ontario statute governs charitable gaming in Ontario.

DEATH CARE

The Cemeteries Act governs the establishment and maintenance of cemeteries in Ontario. It specifically covers the acquisition of land and approval process, the passing of accounts, inspection, penalties, use of perpetual care and pre-need assurance funds, and erection of memorials. Later revisions to the act make provisions for establishing crematoria, columbaria and mausolea. Profit, non-profit and municipal cemeteries are recognized in this act, and appropriate exemptions to the regulations are set out.

The intent of the recently drafted Prearranged Funeral Services Act is to govern the prearrangement of funeral services between a consumer and a licensed insurer or funeral director. Funds received for the provision of funeral services are held in trust until the agreement is fully performed or cancelled by the purchaser. These trust accounts are inspected by the Board of Funeral Services, and any misuse of trust funds may lead to the cancellation of a funeral director's license.

NON-INDUSTRY-SPECIFIC AREA

The Business Practices Act defines what unfair business practices are, and establishes a method by which consumers can claim redress if they have been victimized by an unfair business representation.

Consumers who have been victims of unfair business practices have the right to:

1) Request that the business rescind the agreement, transaction, deal or contract within 6 months of the agreement. The company may either agree to the request, or work out an alternate acceptable agreement;

2) If the business refuses to deal with the consumer, if the consumer is not satisfied with the proposed agreement or if the agreement can not be rescinded, then the consumer may bring a court action against the salesperson and the company.

The consumer may also request the involvement of the Ministry to mediate the dispute.

The Discriminatory Business Practices Act prohibits business practices in Ontario which discriminate on the basis of race, creed, colour, nationality, ancestry, place of origin, gender, or geographic location of persons, notwithstanding other provincial legislation. Basically, this law seeks to prevent one party from making it a condition of doing business with a second party (i.e. an Ontario business) that, either directly or indirectly, the second party must engage in discriminatory practices. Under the act, the director has the power to investigate allegations of discriminatory business practices, to accept the written undertaking of the alleged violator not to engage in a discriminatory business practice, and to order an alleged violator to comply with the act.

The Consumer Protection Act was passed in 1966. It was designed to protect consumers from problems they may encounter when purchasing goods or services or borrowing money.

One of the major provisions of the act covers the regulation of itinerant sellers. An itinerant seller is one whose business includes soliciting, negotiating or arranging for the signing of a contract by a buyer, at a place other than the seller's permanent place of business. In Ontario, itinerant sellers must be registered with the Ministry, and must maintain a permanent place of business in Ontario. The act also requires every itinerant seller to post a bond which may be forfeited if the seller is convicted of an offence involving fraud or theft.

A second provision of the act establishes the need for a written executory contract, which is a binding agreement between a buyer and a seller, when the goods or services are not provided, or when full payment is not made at the same time as the parties enter into the contract. An executory contract which exceeds $50.00 is not binding unless it contains certain information such as names and addresses, description of the goods or services, etc.

Executory contracts negotiated or signed at a place other than the seller's permanent place of business can be cancelled by the buyer within 48 hours of signing the contract. This time period is referred to as a cooling-off period and is used to protect consumers from high pressure direct sellers.

The act also stipulates that a credit contract is not binding unless the contract satisfies the conditions of an executory contract. As well, the lender must provide the consumer with a written statement before credit is given, showing: the total cost expressed in dollars and cents; any insurance or official fees; the annual interest rate; how it is calculated; and the method by which additional charges will be made if there is neglect in payment.

Under the act, referral selling is prohibited. Referral selling takes place when a seller offers a buyer some type of benefit, discount, rebate or advantage on the condition that the buyer provides the seller with the names of potential customers. The act also stipulates that when consumers receive unsolicited goods, that is, goods that were not asked for, they are under no obligation to return or pay for the items. A cease and desist order can be issued under the act whenever the registrar believes an advertisement by a seller or a lender is false, misleading or deceptive.

The Consumer Protection Bureau Act stipulates that there should be a branch of the Ministry of Consumer and Commercial Relations, to be known as the Consumer Protection Bureau. The basic duties of the bureau include:

1) providing information for the purpose of educating and advising consumers with respect to consumer protection, and lending and borrowing practices;

2) receiving and investigating complaints of conduct contrary to legislation for the protection of consumers; and

3) enforcing legislation for the protection of consumers.

3. Research Methodology and Results

RESEARCH METHODOLOGY AND RESULTS

BACKGROUND

Research is a vital ingredient in the review of any legislation. Given the mandate of the Legislative Review Project, it became an ongoing activity of the review team from the outset of the project.

Research took two forms: one dealt with background and overview, the other used formal research methodologies. On the background side, individual researchers used their own initiative in identifying the specific problems and issues in the areas of assigned research. On the formal side, two public opinion surveys, an environmental scan and a series of focus groups were conducted.

Although a great deal of effort went into this research, it is important to note that the 'life' of the project was sufficiently brief to restrict the degree and depth of the research which could be managed while still meeting the deadlines set for the project. This will become apparent in certain issue areas where, among certain recommendations, it is suggested that additional research be done.

A well-accepted fact about research is that each type has its own unique strengths and limitations. It was, therefore, important that the project utilize a wide variety of research methods. This approach, combined with the consultation effort, would seek out information from a variety of sources. That would enable the review team to verify that the central themes which appeared to be emerging were indeed the valid or universal issues of the day.

PROCESS

The following is a summary of the various research methods utilized by the Project:

PART I - BACKGROUND REVIEW OF LITERATURE, LAW AND LEGISLATION

Section I - Literature Review

Section II - Law and Legislation Review

PART II - FORMAL RESEARCH STUDIES

Section I - The Environmental Scan to Year 2000

Section II - Regional Consumer Advisory Panels

Section III - Consumer Opinion Survey

Section IV - Housing Specific Opinion Survey

PART I - BACKGROUND REVIEW OF LITERATURE, LAW AND LEGISLATION

SECTION I - LITERATURE REVIEW:

BACKGROUND

Ministry files and libraries contained a wealth of research information. It was valuable in many ways: as background material; as policy justification for the existing legislation; and as a means to assist in defining issues.

The research material available was so diverse that it does not lend itself to either summarization or to analysis suitable for this chapter of the report. The material is reviewed in more detail, on an individual basis, in later sections dealing with either foundation policy or industry-specific issues.

PROCESS

a) Consumer Complaint Files

Complaints received by the head office of the Ministry, including letters sent directly to the Minister (approximately 1,600 annually), as well as complaints received by the eight Regional Consumer Services Bureaus located throughout the Province, (approximately 12,000 total complaints annually), were examined. The range of issues and problems which these letters and complaint files addressed is best indicated by summarizing the top 10 areas of complaint, as determined by a review of 1,218 of these letters and files for the year 1986.

Top 10 Complaints	Percentage of Complaint Files
Home Repair/Renovation	14.5%
Auto Repair	10.3%
Mail Order	10.0%
Product Repair	8.0%
Auto Defects (at purchase)	5.6%
Credit	3.4%
Real Estate	3.2%
Travel	3.2%
Advertising	3.0%
Fitness Clubs	2.1%
Total	63.3%

As is evident, the top 10 types of complaints represented nearly two thirds (63.3%) of all complaints reviewed.

Researchers in specific issue areas conducted further detailed reviews of these files, letters and investigations.

b) Previous Consumer Opinion Surveys

In 1978, 1980 and 1983, the Ministry commissioned a series of opinion research surveys, entitled Ontario Consumer Issues. These were useful to the project as they tracked and assessed the changing attitudes and issues of concern to consumers. As well, these surveys were used as a basis for the Consumer Opinion Survey conducted by the project team as part of the coordinated research and consultation effort. Both in terms of devising a line of questioning and analyzing the results, this earlier research was invaluable, as indicated in the analysis of that survey described later in this chapter.

c) Previous Policy Submissions

Draft policy submissions, prepared over the past several years, provided other relevant background and insight. They related to a variety of consumer protection and business practices issues.

d) Briefing Notes

The variety of subjects addressed in briefing notes also provided relevant background and insight. These notes were particularly helpful in tracking the development of a number of marketplace problems in specific industries. They were also useful in gaining an appreciation of the development of new marketplace practices, particularly those that fall outside the existing legislation, but are considered unfair or misleading consumer representations.

e) Newspapers and Other Media

Particularly in the early stages of the project, researchers found useful information by conducting a background review of past articles from major Ontario newspapers, plus a daily review of current clippings, as well as tracking radio and TV commentaries.

f) Published Articles, Reports and Other Surveys

Another valuable resource was articles, reports and opinion research conducted by a variety of universities, research institutes, management consulting firms and lawyers with an interest in, and knowledge of, the consumer/business relationship in the marketplace. The assistance of the Ministry's librarian and staff in searching for and obtaining this material was a considerable asset.

SECTION II - LAW AND LEGISLATION REVIEW

a) Interviews with Management and Staff

Those involved in the day-to-day administration of the legislation were a key resource in the project's research efforts. A series of interviews was conducted with directors, registrars, divisional legal counsel and consumer services officers in the Toronto and other Regional Consumer Services Bureaus, and the information gained provided excellent direction. These people were an essential and ongoing resource, frequently consulted throughout the project.

b) Hansard

As the official record of the proceedings of the Legislature of Ontario, Hansard was another useful source of information, providing direction and context on a host of consumer/business topics.

c) Case Law

Recent court cases involving consumer/business disputes, under the Business Practices Act, the Consumer Protection Act, the Sale of Goods Act and other relevant legislation, were particularly valuable in reviewing the effectiveness of existing legislation, providing intervention when unfair or deceptive practices occur.

The reports of the Ontario Law Reform Commission were also examined, and discussions were held with members of the commission on particular topics.

d) The Commercial Registration Appeal Tribunal (CRAT)

CRAT is a quasi-judicial body whose members are appointed by order-in-council, and upon which a statutory power of decision is conferred. The tribunal is independent of any external influence and operates as a body to hear the proposals for administrative action concerning the legislation of the division. CRAT publishes an annual report of all its hearings, and these were useful in determining the variety of problems in the administration of the acts. Also useful was the background which divisional lawyers could provide as participants in these hearings.

e) Legislation in other Jurisdictions

Examination of relevant legislation and programs in other jurisdictions was very broad. The jurisdictions studied were:

- other ministries in the Ontario government;

- other Canadian provinces and the federal government;
- the United States (both federal and state laws);
- the United Kingdom, various European countries, Australia, and countries in the Far East, such as Japan.

This exercise was important in determining innovative and different approaches to the regulation of a fair marketplace, and formed a significant part of the background research.

Direct contact with other jurisdictions, either by telephone or in meetings with administrators, often provided an opportunity to consult in detail. This was especially true in the case of the other provinces and other Ontario ministries.

PART II - FORMAL RESEARCH STUDIES

BACKGROUND

In considering the objectives for the Legislative Review Project, it was important to ensure that the legislation would be timely and that it would be future-oriented.

To accomplish this, it was necessary not only to review what consumers believe to be the issues of the day, but also to project current thinking and anticipate the marketplace of the future.

Toward achieving that goal, four formal research studies were undertaken. They are briefly described in the following sections.

SECTION I - THE ENVIRONMENTAL SCAN

BACKGROUND

The management consulting firm of Arthur D. Little of Canada Ltd. was commissioned by the project to undertake a study to describe the marketplace environment by the year 2000.

This task was approached with three major activities in mind:

1) Development of a model of the marketplace that would allow the definition of the elements that would change;

2) A study of the changes that would be occurring in

business due to technological advances;

3) An examination of changing demographics and general consumer characteristics, what impact these would have on expectations, lifestyles and so on.

A three-volume report was presented to the project at the conclusion of the study.

HIGHLIGHTS

The model which the consultants used generally described the relationships among business, consumers and the government, and allowed the quick identification of:

- the growing pressures on business;
- the changing characteristics of consumers;
- the elements of the relationship between consumers and business.

The elements of the relationship were straightforward and viewed as constant between now and the year 2000. Included were:

- the making of a contract;
- the communication of a sales pitch (aimed at closing a sale);
- the experience of sales promotional efforts;
- the intervention of third parties (agents, brokers, etc.) in the sales process;
- the product or service itself;
- the creation and negotiation of the price and terms of sale (credit);
- the form and content of the legal and contractual relationship;
- the circumstances of physical delivery of the product or service;
- the satisfaction of the consumer's post-sales expectations; and
- the explicit or implicit obligations of warranties and liabilities.

These elements will continue now and into the future, but the real question becomes - how will these elements be changed, given consumer expectations, economic change, the competitive imperatives driving business, and technological use?

In general, consumer characteristics to the year 2000 will be dominated by slow total population growth, an aging population, and the progression of several population groups through critical life stages. The consumer's economic activity is expected to be affected by a complex set of expectations and perceptions about real income and wealth, and by the realities of the distribution of wealth across the generations.

The scan suggests that lifestyles will be strongly influenced by the combination of the following themes:

- quality of life;
- price/value, which is the expectation of a certain level of quality consistent with price;
- self-health;
- information rationalization (systems to help people understand the wealth of information that will be at their disposal);
- lifelong learning and skill enhancement;
- internationalization, which will mean the broadening of people's horizons.

These themes will generate certain needs among consumers, which will represent business opportunities.

Business dynamics to the year 2000 will be dominated by a number of factors, including:

- the effects of technological change, both in the working of businesses and in the actual marketplace;
- the continuing bimodality of industries, whereby some will continue to serve the mass market, with its high volume and low margin, while others will remain low-volume businesses that serve specialized consumer needs;
- a trend to greater service content, whereby a greater proportion of a product's cost will be for service;
- an increase in the permanent tension that exists between manufacturers and distributors; tension that can cause problems for consumers trying to determine which of the two should solve a warranty problem, or accept responsibility for consumer redress;

- further pressure on productivity and cost-effectiveness;
- increasing internationalization of competition;
- a greater corporate commitment to "customer orientation".

PROPOSED DIRECTION

As a result of the scan, a number of issues were proposed for study by the review team. They included:

- The issue of privacy, in light of increasing harassment in target marketing;
- Introduction of new selling media (eg. home shopping by cable) in sales pitches;
- The development of self-ordering and interactive situations between consumers and various machines;
- The problem of "claims in advertising" with complex products and services;
- The expanding area of service experts and third-party middleman services;
- Emergence of new products and services subject to old scams;
- Problems of credit bundling, time-cost, and the practical problems of "smart" card security;
- Practical problems of the growth of remote transactions;
- Problems of bankruptcy, prepayment and deposits;
- Problem of obtaining redress in an overloaded court system, in an increasingly litigious society;
- Issues of warranty and liability.

SECTION II - REGIONAL CONSUMER ADVISORY PANELS

BACKGROUND

In the field of consumer research, focus groups or consumer panels have become a well-respected qualitative research approach.

Consumer panels are most frequently used as a component in the strategic planning process for public policy and consumer affairs programs, as well as in the marketing field.

With a proven record of being ideally suited to gaining in-depth knowledge of consumer opinions about products, services and issues, such panels are also adaptable to various demographic and geographic groupings. Comparatively speaking, panels take less time and money than other forms of consumer research. As an added bonus, such panels have the potential to provide an opportunity to develop and maintain contact with various client groups and improve public awareness about products, services and issues.

For all of these reasons, consumer panels were selected as a major research component of the broader information gathering process used by the Legislative Review Project.

Using the consumer panel concept as the base, a hybrid approach was developed in the form of a series of panels which came to be known as Regional Consumer Advisory Panels. Six cities were chosen for study - London, Ottawa, Sudbury, Thunder Bay, Toronto and Windsor - and the research was conducted between March 24th and May 28th, 1987.

The main objective of this research was to gain a "window" on consumer thinking across the province, examining the public's current opinions and concerns. As well, an attempt was made to gain a sense of the level of satisfaction with the current legislation under review and to seek, where possible, suggestions and input for change.

PROCESS

To gain this level of insight, panelists were chosen from among the opinion leaders of their communities, representing 39 organizations with a provincial or national base, and representing consumers, social services, credit counselling, multi-cultural groups, native peoples, senior citizens, academia and legal interests.

By selecting opinion leaders, the review team gained the views of a wider constituency, thereby providing it with a broader appreciation of community perceptions and concerns.

As with most such research initiatives, the Legislative Review Project used outside consultants to provide the most neutral and objective climate. The firm of E. M. O'Neil and Associates, specialists in consumer research, was hired to moderate the panels and to work with the project staff in developing the design, logistics and format for the panels. The firm of Catherine Fournier Inc., which specializes in bilingual qualitative research, was contracted to conduct a French language panel in Toronto. This panel drew from designated francophone areas across the province.

Overall, this empirical research served an important purpose by reinforcing the Ministry's understanding of current consumer issues and providing the following general insights:

- It showed that project team and others in the Ministry were basically accurate in their assessment of the issues causing the most widespread consumer concern. The main issues discussed pertained to automobiles, contracts, credit, telephone, mail order and itinerant sales, privacy, confidentiality and warranties;
- The panels crystallized thinking and provided input into both the foundation team papers and the industry-specific areas under review;
- Insight was provided into the reasons why consumers are frustrated with various government practices;
- Panel members provided directions which would be effective in the resolution of problems;
- They confirmed the perception that, despite efforts by the Ministry to inform and educate consumers, too little is publicly known about the legislation and programs of the Ministry;
- New approaches were suggested for government to consider in communicating with and educating consumers;
- The panels emphasized the need for strengthened consumer awareness programs, particularly with the prospect of new legislation being developed as a result of the Legislative Review Project.

PROPOSED DIRECTION

Qualitative research, such as these panels represented, offered a number of benefits which would be useful in the ongoing work of the Ministry. These are:

- the opportunity to discuss issues and concepts in depth, obtaining a richness of consumer thought not otherwise available;
- a testing ground for various programs and policies. For example, the Ministry could:
  - consult on proposed policies which would lead to new legislation;
  - test public information booklets and programs;

- seek out attitudes on less tangible issues, such as quality of services.

This research approach provided an excellent consultative tool, as described in the Consultation section, where more detailed directions are discussed.

SECTION III - CONSUMER OPINION SURVEY

BACKGROUND

To complement the project's research, and to gather opinions directly from consumers, a comprehensive Consumer Opinion Survey was developed to explore consumer attitudes, problems and needs.

The timeframe of the project dictated the choice of a mail-out survey as the most practical approach.

This bilingual survey was conducted during April and May, 1987, involving 2,500 consumers, 18 years of age and over, and living in the province of Ontario. The sample was selected randomly from two sources:

- 1,000 from Ministry complaint files,
- 1,500 from telephone directories across Ontario.

The survey questionnaire was developed by the project staff. The survey design and framework used standard social research methodology. A copy of the questionnaire is attached as Appendix A.

The final results of the survey are based on the responses of 646 consumers, of which 52% were from the complaint files, and 48% were from the telephone directories.

By general standards, due to the sample size of 646, representing a 29% response rate, the results can be considered accurate 95% of the time, with the margin of error being 3%.

Although this survey does resemble the three previous studies of Ontario Consumer Issues conducted by the Ministry in 1978, 1980 and 1983, there are some noticeable differences. Whereas the previous surveys covered issues affected by the legislation of all the Ministry's various divisions, this survey concentrated on the issues directly related to the legislation being examined by the project.

Briefly, the lines of questioning related to consumers' opinions of various marketplace practices and issues, explored personal experience in resolving consumer problems, and attempted to elicit opinion regarding Ministry programs and services to the public. A copy of the survey questionnaire is included in the Appendices to this report.

Wherever possible, comparisons were made with the results of the previous studies. However, it is important to note that there are differences. For instance, respondents to the earlier surveys were chosen at random, whereas almost half of the respondents to the 1987 survey were chosen from Ministry complaint files (the rest were picked at random). As well, some of the questions, although similar in content, were not identical in wording, and the most recent survey was a mailed questionnaire, rather than one based on personal interviews.

HIGHLIGHTS

The major highlights and interpretations of this survey are as follows:

1) Comparisons between the two sub-groups

In order to determine differences between the respondents from the telephone directories and those from the complaint files, the data for the two groups was separated and mean values of each variable calculated. By comparing the mean values for the two sub-groups, it became apparent that, although the respondents from the telephone directories tended to be younger and better educated than the respondents from the complaint files, there was very little difference in their attitudes. That provided a measure of confidence that the data from the two sub-groups could be combined for analysis.

2) Consumer Perceptions of Government and Business

Similar to the results obtained in the 1983 study, Ontarians had mixed views on business and the marketplace environment. Respondents generally agreed that the consumer would get a bad deal if government did not set rules for business. They also felt that manufacturers are concerned more with making a profit than with the quality of the product. There was also some agreement that government rules and laws increase the cost of goods and services. However, there was general disagreement with the statement that "the attitude of business today is that the consumer is always right". Respondents also tended to be unsure whether it is useful complaining to government, and whether government protects business more that it does consumers.

Unlike 1983, when most respondents were optimistic about the future and thought that the treatment of consumers by business had improved, results of the 1987 survey indicated that today's consumer looks less favourably toward the future.

This more critical attitude toward business coincides with the public's more supportive attitude toward government involvement in the marketplace. Consumers' views about the remedial value of government in consumer affairs show some changes since 1983. The earlier survey reported public opinion concerning government as stable, meaning that it remained quite critical. The 1987 survey contradicts the earlier findings, showing a somewhat more supportive attitude toward government.

3) Consumer Views of the Quality of Service

Respondents were asked their views of the quality of service provided by 32 types of organizations and sales representatives. Results showed that attitudes tended to be favourable, with most kinds of businesses being given at least an average rating. Those that were perceived to offer poorer quality of service included door-to-door, telephone and mail order sellers. Conversely, ratings of funeral homes, small shops and stores, and credit unions showed consumers were more satisfied with these services than with others listed.

4) Consumer Experience in Resolving Complaints

Of all the complaints, the majority dealt with failure to meet promises, and failure to fulfill the terms of the contract. Other problems noted were: products broke down or failed to operate; service was misrepresented by sales staff or advertisements; and that, following a repair, the product failed to work properly.

Consistent with the 1983 survey results, the overwhelming majority of complaints was directed at the retailer and the manufacturer, followed by the Better Business Bureau, and then the provincial government.

5) Consumers' Awareness of Consumer Laws

As in 1983, respondents were presented with a general question, asking them to list those consumer protection laws and programs of which they were aware. As in 1983, responses included some specific laws, some general concepts which are embodied in laws, and mention of the Better Business Bureau. Although that organization is not related to the Ministry, that particular response reveals some degree of association with the concept of consumer protection and business practices.

Overall, when compared with earlier survey results, there is little in the 1987 results to indicate improvement in the public's awareness of their rights and responsibilities as consumers in the marketplace. Both respondents who were selected randomly and those selected from complaint files were largely unable to correctly identify existing were largely unable to correctly identify existing consumer-oriented programs.

6) Consumer Satisfaction With the Ministry

Not surprisingly, the respondents from the Ministry's complaint files showed a higher response rate to questions concerning contact with the Ministry. However, when asked to indicate whether they were satisfied with their contact with the Ministry, 40% were satisfied, whereas 54% were not satisfied. A considerable percentage (42%) of those who indicated contact stated that the Ministry was unable to provide help in solving their problems. A number (26%) failed to remember contacting the Ministry, or did not realize they had dealt with the Ministry in particular.

The level of awareness of and use of the Consumer Information Centre shows a considerable drop from the 1983 survey results when 48% claimed to have heard of the centre, compared with only 31% in 1987. Although some of this variance could be attributed to the different methods of questioning, the percentage variance is of some concern and suggests an area for further study.

SECTION IV - HOUSING SPECIFIC SURVEY

BACKGROUND

The purpose of this study was to survey consumers in Ontario who purchased a new home in 1986, in order to identify any problems or issues they encountered.

From May to July, 1987, a mail survey was conducted among purchasers of new houses (1,950) and new condominiums (444) across Ontario. The results of the study are based on the responses of 630 new house purchasers and 180 new condominium purchasers, providing response rates of 37% and 31% respectively, or 33% overall.

The survey was designed to obtain a perspective on the problems purchasers were having with new homes, builders and the New Home Warranty Program. The questionnaire sought information about delayed closings, incomplete work, substitutions, and purchasers' contacts with builders and the New Home Warranty Program. A copy of the questionnaire is attached as Appendix B.

HIGHLIGHTS

In general, the results highlighted problems similar to those identified in complaint letters to the Ministry of Consumer and Commercial Relations and the New Home Warranty Program. Respondents also had suggestions for the type of information they thought should be provided to the purchaser, when signing an Agreement of Purchase and Sale. Overall, the most common concern was the lack of disclosure about the complexities of buying a new home.

Respondents, in general, were dissatisfied with the quality of workmanship, the amount of incomplete work and the number of substitutions. Many respondents included detailed lists of defects and problems which they felt the builder should remedy. There also appeared to be a problem with the length of time it took builders to respond to complaints. Purchasers were often forced to wait a long time to have problems rectified, if the builder took action at all.

Although most respondents were aware of the New Home Warranty Program, less than one-third contacted the program. Most of those who did contact the New Home Warranty Program had suggestions for improving the warranty and its administration. Generally, the perceptions were that the program did not have enough enforcement power, and that builders and building standards were not being monitored closely enough, resulting in shoddy workmanship and responsibilities not being fulfilled.

Some respondents also indicated that they thought the warranty was more builder-oriented than consumer-oriented. Such home buyers felt that they were not getting their money's worth from the new home warranty.

PROPOSED DIRECTION

The problems reported in the survey, along with purchaser perceptions of the New Home Warranty Program, and other information gathered, provided researchers with direction for improving consumer access to information, ensuring a more balanced transaction and improving alternatives for consumer redress.

OFFICE USE ONLY

APPENDIX A

CONSUMER OPINION SURVEY

We would like to obtain your personal opinion on issues facing consumers in today's marketplace. Please be assured that the information given by you is confidential. Your opinion will be valuable in obtaining a representative sample of Ontario's consumers. Thank you for your assistance in completing this important study.

PART I:

1. Consumers deal with or are exposed to many different types of organizations and sales representatives promoting products and services. For each of those listed, please indicate (1) your opinion of the quality of service that is being provided by these organizations and (2) whether your rating is based on a personal experience or on things you have heard from others. (FOR EACH SERVICE, CIRCLE ONE NUMBER ONLY FOR QUALITY OF SERVICE AND ONE NUMBER ONLY FOR AWARENESS).

QUALITY OF SERVICE

1 = Excellent
2 = Good
3 = Average
4 = Fair
5 = Poor
X = No Opinion

AWARENESS

1 = Personal Experience
2 = Other Source

	QUALITY OF SERVICE						**AWARENESS**		OFFICE USE ONLY
o Department stores	1	2	3	4	5	X	1	2	__7 __40
o Small shops/stores	1	2	3	4	5	X	1	2	__8 __41
o Food supermarkets	1	2	3	4	5	X	1	2	__9 __42
o Home building contractors	1	2	3	4	5	X	1	2	__10__43
o Home improvement/ repair contractors e.g. paving, roofing, brickwork, painting	1	2	3	4	5	X	1	2	__11__44
o Real estate brokers and salespeople	1	2	3	4	5	X	1	2	__12__45
o Condominium property management companies	1	2	3	4	5	X	1	2	__13__46
o Banks/Trust companies	1	2	3	4	5	X	1	2	__14__47
o Credit unions	1	2	3	4	5	X	1	2	__15__48
o Storefront cheque cashing outlets	1	2	3	4	5	X	1	2	__16__49
o Car manufacturers	1	2	3	4	5	X	1	2	__17__50
o Car repair shops	1	2	3	4	5	X	1	2	__18__51
o Used car dealers	1	2	3	4	5	X	1	2	__19__52
o New car dealers	1	2	3	4	5	X	1	2	__20__53
o Car rental agencies	1	2	3	4	5	X	1	2	__21__54

(cont'd)

o Travel agents/ wholesalers	1	2	3	4	5	X	1	2	__22__55
o Fitness centers	1	2	3	4	5	X	1	2	__23__56
o Dance studios	1	2	3	4	5	X	1	2	__24__57
o Talent and modeling agencies	1	2	3	4	5	X	1	2	__25__58
o Telephone sellers	1	2	3	4	5	X	1	2	__26__59
o Mail order sellers	1	2	3	4	5	X	1	2	__27__60
o Door-to-door sellers	1	2	3	4	5	X	1	2	__28__61
o Appliance manufacturers	1	2	3	4	5	X	1	2	__29__62
o Appliance repair services	1	2	3	4	5	X	1	2	__30__63
o Housekeeping/ Domestic services	1	2	3	4	5	X	1	2	__31__64
o Dry cleaning companies	1	2	3	4	5	X	1	2	__32__65
o Upholstery and rug cleaning companies	1	2	3	4	5	X	1	2	__33__66
o Moving companies	1	2	3	4	5	X	1	2	__34__67
o Storage companies	1	2	3	4	5	X	1	2	__35__68
o Funeral homes	1	2	3	4	5	X	1	2	__36__69
o Cemeteries	1	2	3	4	5	X	1	2	__37__70
o Utility companies e.g. cable T.V., telephone, gas	1	2	3	4	5	X	1	2	__38__71

2. In the past year or so, were you dissatisfied with any products or services that you purchased? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES. . . . . . . .1 **Continue**
NO . . . . .2 **Go to Q.12**

__72

3. What types of consumer products and services were you dissatisfied with ? (SPECIFY)

____

____

____

____

__73__74

4. Did you complain about any of these problems? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES . . . 1 **Continue**
NO . . . 2 **Go to Q.11**

__75

5. Name the product or service which led to your most serious complaint (IDENTIFY ONE COMPLAINT ONLY).

____

____

____

____ __76__77

6. Referring to the complaint you consider the most serious what was the reason for this complaint? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

01 promises not met/contract not fulfilled __78__79
02 quality not as advertised
03 advertised product not available
04 product/service misrepresented by sales staff
05 did not understand conditions of sale
06 sales person pressured me
07 billing error
08 product damaged on delivery
09 product breakdown/failure
10 refund/exchange policy
11 product not repaired properly
12 warranty coverage
13 misleading credit terms
14 unexpected charges
15 company out of business
16 other (SPECIFY)______________________________

7 (a) Thinking again of your most serious complaint. Who did you first take this complaint to? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

01 Manufacturer __80__81
02 Retailer/dealer/agent
03 Federal Government - Department (SPECIFY)____________
04 Provincial Government - Department (SPECIFY)__________
05 Better Business Bureau (BBB)
06 Consumers Association of Canada (CAC)
07 Media (newspaper, t.v., radio)
08 Lawyer\Legal Clinic
09 Local elected official (MP, MPP, Municipal Official)
10 Service Provider (e.g., home renovator, housekeeping service, utility company)
11 Trade\Professional Association
12 Other (SPECIFY) ______________________________

(b) How was this first contact made ? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

1 By telephone __82
2 In writing
3 In person
4 Other (SPECIFY) ______________________________

8 (a) If you did not receive any satisfaction from this first contact who did you contact next ? (SPECIFY)

____

____

____ __83__84

(b) How was this contact made (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

1 By telephone
2 In writing
3 In person
4 Other (SPECIFY) ______________________________ __85

9. What was the result of this complaint? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE MORE THAN ONE NUMBER IF APPLICABLE)

01 Money Back __86
02 Credit note __87
03 Item replaced/exchanged __88
04 Explanation of why the problem occurred __89
05 Accounting/clerical error corrected __90
06 Item delivered __91
07 Item repaired/Job corrected __92
08 Apology __93
09 Court decision __94
10 No settlement yet __95
11 Gave up - could not get satisfaction __96
12 Other (SPECIFY) ______________________________ __97__98

10 (a) How satisfied were you with the results of your complaint? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__100

(b) If dissatisfied, please explain. (SPECIFY)

____

____ __101__102

11. If you had problems but did not complain, why not? (SPECIFY)

____

____ __103__104

12. In your opinion, what is the most effective action for consumers to take when they have a complaint? (SPECIFY)

____

____

____ __105__106

13. How much do you agree or disagree with each of the following statements. (CIRCLE ONE NUMBER ONLY FOR EACH ITEM LISTED).

1 = Strongly Agree
2 = Somewhat Agree
3 = Neither Agree nor Disagree
4 = Somewhat Disagree
5 = Strongly Disagree
X = No opinion

o The attitude of business today is that "the consumer is always right"	1	2	3	4	5	X	__108
o Consumers would get a bad deal if government did not set rules for business	1	2	3	4	5	X	__109
o Manufacturers care more about making a profit than about the quality of their product	1	2	3	4	5	X	__110
o Government protects business more than consumers	1	2	3	4	5	X	__111
o In most cases, it is useful complaining to government because they can and will do something for you	1	2	3	4	5	X	__112
o Government rules and laws increase the cost of goods and services	1	2	3	4	5	X	__113
o The choice to purchase extra warranty coverage is usually worth the additional cost	1	2	3	4	5	X	__114
o Warranty coverage on major products (car, appliance, home, T.V.) has improved in the past few years	1	2	3	4	5	X	__115
o Most manufacturers will not honour the warranty when a product breaks down	1	2	3	4	5	X	__116
o I like to familiarize myself with information on products I am planning to purchase	1	2	3	4	5	X	__117
o Printed warranties are usually complicated and difficult to understand	1	2	3	4	5	X	__118

(Cont'd)

1 - Strongly Agree
2 - Somewhat Agree
3 - Neither Agree nor Disagree
4 - Somewhat Disagree
5 - Strongly Disagree
X - No Opinion

o A discount should not be given to customers paying by cash	1	2	3	4	5	X	__119
o I prefer to use one 'all purpose' credit card than many	1	2	3	4	5	X	__120
o Credit cards should be accepted in grocery stores	1	2	3	4	5	X	__121
o I feel the convenience of credit card transactions conducted over the telephone is worth the risk	1	2	3	4	5	X	__122
o When considering a loan I always shop around for the best interest rates	1	2	3	4	5	X	__123
o It is necessary for credit issuers (bank, stores) to have access to other credit transaction information on borrowers	1	2	3	4	5	X	__124
o I have a greater understanding of my rights as a consumer than I did five years ago	1	2	3	4	5	X	__125
o Most consumers' problems result from their own carelessness	1	2	3	4	5	X	__126
o Most stores let their customers know about their policy on refund or exchanges before a purchase is made	1	2	3	4	5	X	__127
o Most companies are prepared to act on consumer complaints	1	2	3	4	5	X	__128
o Consumers can usually resolve their problems themselves	1	2	3	4	5	X	__129
o I believe government should spend more money educating consumers about their rights	1	2	3	4	5	X	__130
o Most consumers are willing and able to make their complaints known	1	2	3	4	5	X	__131

---

14 (a) Do you use the automated/instant teller machines that are accessible at most banks? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES.	1	**CONTINUE**	
NO	2	**GO TO Q.15(a)**	__133

(b) How frequently do you use these machines? (CIRCLE APPROPRIATE LETTER)

A less than once a month
B 1 or 2 times a month
C 1 or 2 times a week
D more than 2 times a week __134

(c) Please indicate how you use these machines: (CIRCLE MORE THAN ONE LETTER IF APPROPRIATE)

A to pay bills __135
B to make deposits __136
C to withdraw cash __137
D to update bank book __138

(d) Please indicate your level of satisfaction with the ease of use and convenience of these machines. (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__139

(e) If dissatisfied, please explain. (SPECIFY)

____

____

______________________________ __140__141

15 (a) Have you booked a vacation package (including return transportation, accommodation, plus other services) in the last year or two? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES. . . . . . . .1 **CONTINUE**
NO . . . . .2 **GO TO Q.16(a)** __142

(b) Did you make these arrangements through a: (CIRCLE APPROPRIATE LETTER)

A Travel Agent
B Travel Wholesaler
C Other (SPECIFY) ______________________ __143

(c) What was your overall level of satisfaction with the service provided in making these arrangements? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__144

(d) If dissatisfied, please explain. (SPECIFY)

____

____

____ __145__146

16 (a) Have you recently (in the past two years) had to make funeral service arrangements in Ontario? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES. . . . . . . .1 **CONTINUE**
NO . . . . .2 **GO TO Q.17(a)** __147

(b) What was your level of satisfaction with the service provided in making these arrangements? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__148

(c) If dissatisfied, please explain. (SPECIFY)

____

____

____ __149__150

17 (a) In the past two years have you had the need to enforce a product warranty? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES. . . . . . . .1 **CONTINUE**
NO . . . . .2 **GO TO Q.18(a)** __151

(b) On what type of product? (SPECIFY) ____________________ __152__153

____

(c) What was you level of satisfaction with obtaining after sale service provided by the warranty? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__154

(d) If dissatisfied, please explain. (SPECIFY)

__155__156

18 (a) In the past two years have you purchased a newly built home? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES. . . . . 1 **CONTINUE**
NO . . . . 2 **GO TO Q.19(a)**

__157

(b) What was your level of satisfaction with the completion of contract arrangements made with the builder? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__158

(c) If dissatisfied, please explain. (SPECIFY)

__159__160

19 (a) Do you own or lease a car? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES . . . . 1 **Continue**
NO . . . . 2 **Go to Q.20(a)**

__161

(b) Did you buy/lease this car used or new? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

USED . . . . 1 NEW 2

__162

(c) What was your level of satisfaction with the manufacturer warranty provided for after sale service? (CIRCLE ONE NUMBER ONLY)

Extremely Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Extremely Dissatisfied
1	2	3	4	5

__163

(d) If dissatisfied, please explain. (SPECIFY)

____

____

____ __164__165

20 (a) How many unsolicited telephone calls does your household receive per month? (CIRCLE APPROPRIATE LETTER)

A None
B One to Three
C Four to Six
D Seven to Ten
E More than Ten __166

(b) Would you appreciate receiving more or less calls per month? (CIRCLE APPROPRIATE LETTER)

A More
B Less
C No change __167

Explain ____________________________________

____ __168__169

21. Here is a list of actions that can be taken by consumers to achieve satisfaction in the resolution of a complaint. Please rate how effective you think each action is on a scale from excellent to poor. (CIRCLE ONE NUMBER ONLY FOR EACH ITEM LISTED)

1 = Excellent
2 = Good
3 = Average
4 = Fair
5 = Poor
X = No opinion

o Returning problem item	1	2	3	4	5	X	__171
o Taking manufacturer, retailer, dealer, agent etc. to small claims court	1	2	3	4	5	X	__172
o Taking manufacturer, retailer, dealer, agent etc. to higher court	1	2	3	4	5	X	__173
o Contacting MP, MPP or Municipal Official	1	2	3	4	5	X	__174
o Contacting Government Department	1	2	3	4	5	X	__175
o Getting the newspapers, T.V., etc. to publicize the issue	1	2	3	4	5	X	__176
o Complaining to company/ manufacturer	1	2	3	4	5	X	__177
o Writing to company President	1	2	3	4	5	X	__178

22. As a consumer would you say the marketplace has changed for the better or worse over the past few years? (PLEASE CIRCLE ONE NUMBER ONLY)

Better	Somewhat Better	No Change	Somewhat Worse	Worse
1	2	3	4	5

__179

23. If you were making a major purchase, identify the source you would contact first for information or assistance in helping you make your purchase decision? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

01 Federal Government __180__181
02 Provincial Government
03 Better Business Bureau
04 Consumers' Association of Canada
05 Chamber of Commerce
06 Consumer Information Centre
07 Community Information Centre
08 Library
09 Lawyer
10 Friend/relative
11 Newspaper/T.V./radio/magazine
12 Manufacturer/retailer/dealer/agent
13 Other (SPECIFY) ______________________________

24. Consumers have certain rights, identify the first source you would contact to find out about these rights? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER - CIRCLE ONE NUMBER ONLY)

01 Federal Government __182__183
02 Provincial Government
03 Better Business Bureau
04 Consumers' Association of Canada
05 Consumer Information Centre
06 Community Information Centre
07 Library
08 Lawyer
09 Friend/relative
10 Newspaper/T.V./radio/
11 Other (SPECIFY) ______________________________

25 (a) Are you aware of the existence of any laws or government programs that serve to protect the consumer's of Ontario. (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES . . . . 1 **Continue**
NO . . . . 2 **Go to Q.26 (a)** __184

(b) Please list those laws and programs you are aware of? (SPECIFY)

__185__186

26 (a) Have you had any contact with the Ontario Ministry of Consumer and Commercial Relations? (CIRCLE THE NUMBER INDICATING THE APPROPRIATE ANSWER)

YES . . . . 1 **Continue**
NO . . . . 2 **Go to Q.27 (a)** __187

(b) What was the nature of this contact? (SPECIFY)

__188__189

(c) Were you satisfied? (CIRCLE APPROPRIATE NUMBER)

YES . . . 1 NO . . . 2 __190

Explain

__191__192

27 (a) Have you heard of the Ministry's Consumer Information Centre? (CIRCLE APPROPRIATE NUMBER)

YES . . . 1 **Continue**
NO . . . 2 **Go to Part II** __193

(b) Have you used the Centre? (CIRCLE APPROPRIATE NUMBER)

YES . . . 1 **Continue**
NO . . . 2 **Go to Part II** __194

(c) Did you telephone or visit the Centre? (CIRCLE APPROPRIATE NUMBER)

TELEPHONE . . . 1 VISIT . . . 2 __195

(d) What was the purpose of this call or visit? (SPECIFY)

__196__197

(e) Were you satisfied? (CIRCLE APPROPRIATE NUMBER)

YES . . . 1 NO . . . 2 __198

Explain

__199__200

PART II:

THE FOLLOWING QUESTIONS HAVE BEEN INCLUDED TO HELP US UNDERSTAND THE CONSUMERS OF ONTARIO. PLEASE KEEP IN MIND THAT ALL THIS INFORMATION IS KEPT COMPLETELY CONFIDENTIAL.

1. To which of the following age groups do you belong? (CIRCLE THE LETTER INDICATING THE APPROPRIATE ANSWER)

A 18 - 24 years
B 25 - 34 years
C 35 - 44 years
D 45 - 54 years
E 55 - 64 years
F 65 - 74 years
G 75 years of age and over __202

2. Are you . . . (CIRCLE APPROPRIATE NUMBER)

Male . . . 1 Female . . . 2 __203

3. Do you have any long term disabilities or handicaps (physical condition, mental condition, or health problem) which cause you problems in your daily activities as a consumer? (CIRCLE APPROPRIATE NUMBER)

YES . . . 1 NO . . . 2 __204

4. Which of the following best describes your last year of formal education? (CIRCLE APPROPRIATE LETTER)

A Some or completed public school
B Some or completed high school
C Some or completed university or college
D Other (SPECIFY) ____________________ __205

5. What is your current occupation ? (SPECIFY)

____________________ __206__207

6. Which of the following best describes your household? (CIRCLE APPROPRIATE LETTER)

A Unattached adult
B Single parent family
C Two or more adults - no children
D Two or more adults - with children __208

7. What is your type of residence? (CIRCLE APPROPRIATE LETTER)

A House
B Apartment/Flat
C Townhouse/Condominium
D Duplex
E Other (SPECIFY) ____________________ __209

8. Do you rent or own your current residence? (CIRCLE APPROPRIATE NUMBER)

RENT . . . 1 OWN . . . 2 __210

9. Which of the following best describes the location of your residence? (CIRCLE APPROPRIATE LETTER)

A Rural
B Town with a population under 10,000
C Town/City with a population of 10,001 - 100,000
D City with a population of 100,001 to 200,000
E Large metropolitan centre with a population over 200,000 __211

10. Were you born in Canada? (CIRCLE APPROPRIATE LETTER)

YES . . . 1 **Go to Q. 13**
NO . . . 2 **Continue** __212

11. If not born in Canada how long have you lived here? (SPECIFY) (if exact number of years is not known please enter best estimate)

__________ years __213__214

12. What age were you when you came to Canada? (SPECIFY)

__________ years __215__216

13. Which language do you primarily use at home? (CIRCLE ONE LETTER ONLY)

A English
B French
C Other (SPECIFY) ______________________________ __217

14. Into which of the following categories does your total household income before taxes, fall? (CIRCLE THE LETTER INDICATING THE APPROPRIATE CATEGORY)

A	Under $10,000	E	$40,000 - $49,999
B	$10,000 - $19,999	F	$50,000 - $59,999
C	$20,000 - $29,999	G	$60,000 - $69,999
D	$30,000 - $39,999	H	$70,000 and over

__218

15. How many contribute to this total income? (CIRCLE THE LETTER INDICATING THE APPROPRIATE ANSWER)

A One
B Two
C Three
D Four
E More than four __219

16. How many credit cards in total does your household possess? (CIRCLE APPROPRIATE LETTER)

A None
B One to Three
C Four to Six
D More than Six __220

Do you have any additional comments ?

____

____

____

____ __221__222

Please place your completed questionnaire in the enclosed self addressed envelope and mail to:

Ministry of Consumer and Commercial Relations
Legislative Review Project
555 Yonge Street
Toronto, Ontario
M7A 2H6

Thank you for your cooperation in completing the questionnaire.

APPENDIX B

NEW HOUSE/CONDOMINIUM BUYERS' SURVEY

THANK YOU for your assistance in completing this important study. Please be assured that the information given by you is confidential. Your opinions will be valuable in obtaining a representative sample of new home owners in Ontario.

For coding purposes, PLEASE PROVIDE US WITH YOUR STREET NUMBER AND NAME (AND UNIT NUMBER where appropriate):

___ unit # ___ street number ___ street name

FOR OFFICE USE ONLY
1 ___ 2 ___ 3 ___ 4 ___

TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:

1 a) Did you own or rent before you bought your present home?

___ Own
___ Rent If rent go to #2

5 ___

b) If you owned, when did you close the deal to sell that home?

___ / ___ / ___
day month year

6 ___ 7 ___
8 ___ 9 ___

c) On what date did you take possession of your new home?

___ / ___ / ___
day month year

10 ___ 11 ___
12 ___ 13 ___

2 a) What was the name of the builder of your present home?

___________________ ___ DON'T KNOW

14 ___ 15 ___

b) Did you experience difficulty contacting the builder between signing the Agreement of Purchase and Sale and the closing date?

___ YES
___ NO

16 ___

3) Was the sub-division or condominium plan registered with the municipality when you bought your new home?

___ YES
___ NO
___ DON'T KNOW

17 ___

NEW CONDOMINIUM OWNERS, please go to question #5

FOR HOUSE OWNERS ONLY:

4 a) Did you experience a delay in the closing date of your new home?

____ YES
____ NO If no go to #5 18 ____

b) How long was the delay in the closing date of your new home? (please check the appropriate category)

____ less than 1 month
____ 1-2 month delay
____ 3-5 month delay
____ 6-8 month delay 19 ____
____ 9-11 month delay
____ 12 months or more

c) How many times did your closing date change?

____ once
____ twice
____ three times
____ four times 20 ____
____ other

d) What were the reasons given for the delay in closing?

______________________________ 21 ____

____

____

____

e) Were you kept informed about the delays with sufficient notice by the builder?

____ YES
____ NO 22 ____

f) With whom did you arrange your mortgage? (please check the appropriate category)

____ bank 23 ____
____ builder
____ other

NEW HOUSE OWNERS please go to question #6.

FOR NEW CONDOMINIUM OWNERS ONLY:

5 a) Did you experience a delay in taking possession of your new condominium unit?

___ YES
___ NO

24 ____

b) Once in possession of the condominium unit was there a delay in the actual closing, when you assumed title?

___ YES
___ NO

25 ____

c) What were the reasons given for the delay in assuming title?

26 ____

____
____
____
____
____

* **TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:**

6 a) What was the amount of your initial deposit? $________ 27___ 28___ 29___

b) Were you asked to pay any additional deposit prior to taking possession?

___ YES 30___
___ NO If no go to #6d

c) What was the amount of any additional deposit you were required to pay.

$________ 31___ 32___ 33___

6 d) Were you paid any interest on your deposit(s)?

___ YES 34___
___ NO If no go to #7

e) From what date were you paid interest on your deposit(s)? (please check the appropriate category)

___ initial deposit date 35___
___ 1st additional deposit date
___ 2nd additional deposit date
___ other, please explain:______________________________

____

f) To what date were you paid interest on your deposit(s)? (please check the appropriate category)

___ original closing date 36___
___ actual closing date
___ other, please explain:______________________________

____

g) Exactly how many months were you paid interest on your deposit(s)?

__________ 37___ 38___

h) At what rate were you paid interest on your deposit(s)?

________% 39___ 40___

xx

7 a) Was your new house or condominium unit complete when you moved in?

___ YES If yes go to #8 41 ___
___ NO

b) If No, please explain: ______________________________ 42 ___ 43 ___

____

____

____

8) Was your new house or condominium unit what you expected in terms of:

	YES	NO	
a) quality of material	___	___	44 ___
b) workmanship	___	___	45 ___
c) design	___	___	46 ___

Please explain: ______________________________ 47 ___ 48 ___

____

____

____

9a) Were you given enough time to inspect your new house or condominium unit at the time of closing, when you filled out the Certificate of Completion and Possession?

___ YES If yes go to #10a 49 ___
___ NO

b) If No, please explain: ______________________________ 50 ___ 51 ___

____

____

____

10a) Did the builder make substitutions while building your house or condominium unit that you did not originally agree to?

___ YES 52 ___
___ NO If no go to #11

b) If substitutions were made, what were they? Please explain:

____ 53 ____

____

____

____

____

11a) Did you experience other problems or defects with your new house or condominium unit?

___ YES

___ NO If no go to #12 54 ____

If YES, Please check the appropriate category or categories: 55 ____

- ____ drywall
- ____ painting/touchups
- ____ windows/doors leak water
- ____ windows/doors are drafty
- ____ basement walls/floor cracked
- ____ exterior cracks/foundation
- ____ other, please explain: ____________________

____

____

____

b) After identifying these problems, did you contact the builder?

___ YES

___ NO If no go to #12 56 ____

c) Did the builder resolve all of your complaints?

___ YES If yes go to #12 57 ____

___ NO

If No, please explain: ____________________ 58 ____

____

____

____

12a) Are you aware of the New Home Warranties Plan operated the New Home Warranty Program? This corporation is designated by the Lieutenant Governor of Ontario under the New Home Warranty Plan Act to monitor the warranty program.

___ YES 59 ___
___ NO

b) Are you aware of any other warranty program?

___ YES 60 ___
___ NO

If YES, what is the name of the warranty program?

_______________________________________ 61 ___

c) Have you contacted a warranty program regarding problems with your house or condominium unit?

New Home
Warranty Program ___ YES ___ NO 62 ___

If no
House owners go to #18
Condo owners go to #13

Other ___ YES ___ NO 63 ___

d) What action did the warranty program take?

_______________________________________ 64 ___
____
____
____

e) In your opinion is there a need for improvements in the warranty program? Please explain: _______________ 65 ___ 66 ___

____
____
____
____

NEW HOUSE OWNERS, please go to question #18

FOR NEW CONDOMINIUM OWNERS ONLY:

13a) Were the common elements completed when you moved in?

___ YES If yes go to #14 67 ___
___ NO

b) If No, please explain: ____________________ 68 ___ 69 ___

____

____

____

14) Were the common elements what you expected in terms of:

	YES	NO	
Quality of Material	___	___	70 ___
Workmanship	___	___	71 ___
Design	___	___	72 ___

Please explain: ____________________ 73 ___ 74 ___

____

____

____

15a) Were the common elements, as listed in the description of the property, in functional order?

___ YES If yes go to #16 75 ___
___ NO

b) If No, please explain: ____________________ 76 ___ 77 ___

____

____

____

16) Were you made aware of your rights and responsibilities regarding the use of the common elements at the time of possession?

___ YES 78 ___
___ NO

17a) Have you contacted the New Home Warranty Program regarding problems with the common elements?

___ YES 79 ___
___ NO

b) Has the Board of Directors been established?

___ YES 80 ___
___ NO If no go to #18

c) Has the Board of Directors contacted the New Home Warranty Program regarding problems with the common elements?

___ YES 81 ___
___ NO
___ DON'T KNOW

d) In your opinion were there problems with the common elements that should have been reported by the Board of Directors to the New Home Warranty Program, but that were not reported?

___ YES 82 ___
___ NO
___ DON'T KNOW

e) If Yes, please explain: ______________________________ 83 ___ 84 ___

____

____

____

* **TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:**

18a) Were you satisfied with the information provided to you by the builder at the time of signing your Agreement of Purchase and Sale?

___ YES 85___
___ NO

b) If no, what information do you think should be provided to the home buyer when signing the Agreement of Purchase and Sale? ____________________ 86___ 87___

____

____

____

____

c) Did you review the Agreement of Purchase and Sale with your lawyer before you signed it?

___ YES 88___
___ NO

NEW HOUSE OWNERS have completed the questions. Thank you.

NEW CONDOMINIUM OWNERS PLEASE CONTINUE:

19a) Were you aware of the 10 day cooling off period when you signed your Agreement of Purchase and Sale?

___ YES 89___
___ NO If no go to #20

b) Was this cooling off period helpful to you when making your final decision?

___ YES 90___
___ NO

20) Were you obliged to take a short term mortgage (6 months or less) on closing?

___ YES 91___
___ NO

21a) Were you given a breakdown on the monthly fee you were paying to the developer prior to taking title?

___ YES 92 ___
___ NO

b) If Yes, what was the breakdown you were given?

______________________________ 93 ___

____

22) Were you required to sign a proxy over to the mortgagee giving them voting rights on the Board of Directors?

___ YES 94 ___
___ NO
___ Mortgage not negotiated

23a) Has there been any misuse of voting procedures?

___ YES 95 ___
___ NO
___ Voting procedures not established

b) If Yes, please explain:

______________________________ 96 ___ 97 ___

____

____

____

24) In your opinion does the Board of Directors act in the interests of the majority of owners?

___ YES 98 ___
___ NO
___ Board Not established

Please explain: ______________________________ 99 ___ 100 ___

____

____

____

25) Based on your knowledge what changes would you like to see made to the Condominium Act?

101 ____ 102 ____

THANK YOU for taking the time to complete our study.

NEW HOUSE/CONDOMINIUM BUYERS' SURVEY

THANK YOU for your assistance in completing this important study. Please be assured that the information given by you is confidential. Your opinions will be valuable in obtaining a representative sample of new home owners in Ontario.

For coding purposes, PLEASE PROVIDE US WITH YOUR STREET NUMBER AND NAME (AND UNIT NUMBER where appropriate):

______ unit #   ______ street number   ____________ street name

FOR OFFICE USE ONLY
1 ___ 2 ___ 3 ___

TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:

1 a) Did you own or rent before you bought your present home?

___ Own   5 ___
___ Rent If rent go to #2

b) If you owned, when did you close the deal to sell that home?   6 ___ 7 ___

___ / ___ / ___
day month year   8 ___ 9 ___

c) On what date did you take possession of your new home?   10 ___ 11 ___

___ / ___ / ___
day month year   12 ___ 13 ___

2 a) What was the name of the builder of your present home?

____________________   ___ DON'T KNOW   14 ___ 15 ___

b) Did you experience difficulty contacting the builder between signing the Agreement of Purchase and Sale and the closing date?

___ YES   16 ___
___ NO

3) Was the sub-division or condominium plan registered with the municipality when you bought your new home?

___ YES   17 ___
___ NO
___ DON'T KNOW

NEW CONDOMINIUM OWNERS, please go to question #5

FOR HOUSE OWNERS ONLY:

4 a) Did you experience a delay in the closing date of your new home?

___ YES 18 ___
___ NO If no go to #5

b) How long was the delay in the closing date of your new home? (please check the appropriate category)

____ less than 1 month
____ 1-2 month delay
____ 3-5 month delay
____ 6-8 month delay 19 ___
____ 9-11 month delay
____ 12 months or more

c) How many times did your closing date change?

____ once
____ twice
____ three times 20 ___
____ four times
____ other

d) What were the reasons given for the delay in closing? 21 ___

e) Were you kept informed about the delays with sufficient notice by the builder?

___ YES 22 ___
___ NO

f) With whom did you arrange your mortgage? (please check the appropriate category)

___ bank 23 ___
___ builder
___ other

NEW HOUSE OWNERS please go to question #6.

FOR NEW CONDOMINIUM OWNERS ONLY:

5 a) Did you experience a delay in taking possession of your new condominium unit?

___ YES
___ NO

24 ___

b) Once in possession of the condominium unit was there a delay in the actual closing, when you assumed title?

___ YES
___ NO

25 ___

c) What were the reasons given for the delay in assuming title?

____

____

____

____

____

26 ___

* **TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:**

6 a) What was the amount of your initial deposit? $_________ 27__ 29__

b) Were you asked to pay any additional deposit prior to taking possession?

___ YES
___ NO If no go to #6d 30__

c) What was the amount of any additional deposit you were required to pay.

$_________ 31__ 32__

6 d) Were you paid any interest on your deposit(s)?

___ YES
___ NO If no go to #7 34__

e) From what date were you paid interest on your deposit(s)? (please check the appropriate category)

___ initial deposit date 35__
___ 1st additional deposit date
___ 2nd additional deposit date
___ other, please explain:____________________________

____

f) To what date were you paid interest on your deposit(s)? (please check the appropriate category)

___ original closing date 36__
___ actual closing date
___ other, please explain:____________________________

____

g) Exactly how many months were you paid interest on your deposit(s)?

__________ 37__ 38

h) At what rate were you paid interest on your deposit(s)?

________% 39__ 41

7 a) Was your new house or condominium unit complete when you moved in?

___ YES **If yes go to #8** 41 ___
___ NO

b) If No, please explain: ________________________________ 42 ___ 4

____

____

____

8) Was your new house or condominium unit what you expected in terms of:

	YES	NO	
a) quality of material	___	___	44 ___
b) workmanship	___	___	45 ___
c) design	___	___	46 ___

Please explain: ________________________________ 47 ___ 4

____

____

____

9a) Were you given enough time to inspect your new house or condominium unit at the time of closing, when you filled out the Certificate of Completion and Possession?

___ YES **If yes go to #10a** 49 ___
___ NO

b) If No, please explain: ________________________________ 50 ___ 5'

____

____

____

10a) Did the builder make substitutions while building your house or condominium unit that you did not originally agree to?

___ YES 52 ___
___ NO **If no go to #11**

b) If substitutions were made, what were they? Please explain: 53 ___

11a) Did you experience other problems or defects with your new house or condominium unit?

___ YES 54 ___
___ NO If no go to #12

If YES, Please check the appropriate category or categories: 55 ___

- ____ drywall
- ____ painting/touchups
- ____ windows/doors leak water
- ____ windows/doors are drafty
- ____ basement walls/floor cracked
- ____ exterior cracks/foundation
- ____ other, please explain: ____

b) After identifying these problems, did you contact the builder?

___ YES
___ NO If no go to #12 56 ___

c) Did the builder resolve all of your complaints?

___ YES If yes go to #12 57 ___
___ NO

If No, please explain: ____ 58 ___

12a) Are you aware of the New Home Warranties Plan operated the New Home Warranty Program? This corporation is designated by the Lieutenant Governor of Ontario under the New Home Warranty Plan Act to monitor the warranty program.

___ YES 59 ___
___ NO

b) Are you aware of any other warranty program?

___ YES 60 ___
___ NO

If YES, what is the name of the warranty program?

______________________________ 61 ___

c) Have you contacted a warranty program regarding problems with your house or condominium unit?

New Home
Warranty Program ___ YES ___ NO 62 ___

If no
House owners go to #18
Condo owners go to #13

Other ___ YES ___ NO 63 ___

d) What action did the warranty program take?

______________________________ 64 ___
____
____
____

e) In your opinion is there a need for improvements in the warranty program? Please explain: ______________ 65 ___

____
____
____
____

NEW HOUSE OWNERS, please go to question #18

FOR NEW CONDOMINIUM OWNERS ONLY:

13a) Were the common elements completed when you moved in?

___ YES If yes go to #14 67 ___
___ NO

b) If No, please explain: ______________________________ 68 ___ 6'

____

____

____

14) Were the common elements what you expected in terms of:

	YES	NO	
Quality of Material	___	___	70 ___
Workmanship	___	___	71 ___
Design	___	___	72 ___

Please explain: ______________________________ 73 ___ 2'

____

____

____

15a) Were the common elements, as listed in the description of the property, in functional order?

___ YES If yes go to #16 75 ___
___ NO

b) If No, please explain: ______________________________ 76 ___ 7

____

____

____

16) Were you made aware of your rights and responsibilities regarding the use of the common elements at the time of possession?

___ YES 78 ___
___ NO

17a) Have you contacted the New Home Warranty Program regarding problems with the common elements?

___ YES 79 ___
___ NO

b) Has the Board of Directors been established?

___ YES 80 ___
___ NO If no go to #18

c) Has the Board of Directors contacted the New Home Warranty Program regarding problems with the common elements?

___ YES 81 ___
___ NO
___ DON'T KNOW

d) In your opinion were there problems with the common elements that should have been reported by the Board of Directors to the New Home Warranty Program, but that were not reported?

___ YES 82 ___
___ NO
___ DON'T KNOW

e) If Yes, please explain: ________________________________ 83 ___ 2

____

____

____

* **TO BE COMPLETED BY NEW HOUSE OWNERS AND NEW CONDOMINIUM OWNERS:**

18a) Were you satisfied with the information provided to you by the builder at the time of signing your Agreement of Purchase and Sale?

___ YES 85 ___
___ NO

b) If no, what information do you think should be provided to the home buyer when signing the Agreement of Purchase and Sale? ______________________________ 86 ___ 87

____

____

____

____

c) Did you review the Agreement of Purchase and Sale with your lawyer before you signed it?

___ YES 88 ___
___ NO

NEW HOUSE OWNERS have completed the questions. Thank you.

NEW CONDOMINIUM OWNERS PLEASE CONTINUE:

19a) Were you aware of the 10 day cooling off period when you signed your Agreement of Purchase and Sale?

___ YES 89 ___
___ NO If no go to #20

b) Was this cooling off period helpful to you when making your final decision?

___ YES 90 ___
___ NO

20) Were you obliged to take a short term mortgage (6 months or less) on closing?

___ YES 91 ___
___ NO

21a) Were you given a breakdown on the monthly fee you were paying to the developer prior to taking title?

___ YES
___ NO 92 ___

b) If Yes, what was the breakdown you were given?

______________________________ 93 ___

____

22) Were you required to sign a proxy over to the mortgagee giving them voting rights on the Board of Directors?

___ YES 94 ___
___ NO
___ Mortgage not negotiated

23a) Has there been any misuse of voting procedures?

___ YES 95 ___
___ NO
___ Voting procedures not established

b) If Yes, please explain:

______________________________ 96 ___

____

____

____

24) In your opinion does the Board of Directors act in the interests of the majority of owners?

___ YES
___ NO 97 ___
___ Board Not established

Please explain: ______________________________ 98 ___

____

____

____

25) Based on your knowledge what changes would you like to see made to the Condominium Act?

____ 101____ 1E

____

____

____

____

____

____

____

THANK YOU for taking the time to complete our study.

4. Public Consultations

PUBLIC CONSULTATIONS

BACKGROUND

One of the main commitments of the Legislative Review Project was broad consultation with all the client groups or "stakeholders" of the Ministry, both in the business sector and among consumer interest groups.

In order to meet this commitment, a well coordinated plan had to be designed and implemented. In designing a plan, three major objectives were identified. First, there was a critical need to reach all relevant stakeholders at an early stage in order to gain sufficient input. Second, the plan required a process through which a wide variety of consumers from across the province could be reached. Finally, the consultation process required an additional, external perspective; one that would bring consumer and business interests together, and serve throughout the life of the project.

As the consultation plan was being developed, it became evident that, with few exceptions, business interests are well-organized and focused through active, effective industry associations. Consumers, on the other hand, are not as focused, and, with the exception of the Consumers' Association of Canada (Ontario), and the United Senior Citizens of Ontario, generally appear to lack an organizational structure through which their views can be made known.

It was also discovered that although many special interest groups existed - some community-oriented and others focused on a specific interest or need - few immediately recognized themselves as requiring a "consumer perspective". This was particularly true of the more vulnerable sectors of the population. However, once such groups began considering themselves in this light, they were able to make unique contributions.

In spite of those differences, an attempt was made to maintain a balance between considerations of consumer interests with those of business. This is evident from the strategic consultation plan which was developed and implemented.

PROCESS

- Regional Consumer Advisory Panels

  Although primarily considered a research tool, and these panels provided an excellent opportunity to consult with opinion leaders in a number of communities and across a number of interest groups.

- Invitational Letters to Business/Industry Associations, and Community, Legal and Academic Interests

  Letters were sent by the Minister of Consumer and Commercial Relations, providing background on the project and inviting comments, briefs, submissions or meetings to discuss interests and concerns.

- Invitational Letters to Agencies representing the more Vulnerable Sectors of the Population, and Senior Citizens

  Letters were sent from the project director, providing background on the project and inviting comments, briefs submissions or meetings to discuss interests and concerns. A number of these organizations were also asked to provide panelists for the Regional Consumer Advisory Panels.

- Industry- and Issue-Specific Expert Panels

  In the regulated industry-specific areas, such as automobiles, housing and travel, expert panels were formed. They were comprised of industry, consumer and ministry representatives with expertise in the various areas. As well, a number of issue-specific expert panels were created.

- Minister's Advisory Committee

  Created specifically for the project, and representing both business and consumer interests, this committee's mandate was to review and advise on the process used and the broader directions which the project would be proposing.

To gain an appreciation of the diversity of the consultation undertaken, and the richness of thinking that resulted, this chapter briefly discusses each aspect of the plan. Further detail on the results of the consultation process is provided in the relevant chapters on foundation and industry-specific policy.

SECTION I - MINISTER'S ADVISORY COMMITTEE

BACKGROUND

The scope and diversity of the project, as well as the variety of consultation groups and processes which were required, stressed the need for a constant and consistent consultative effort that would assist in steering the project throughout its life. Such a process was developed in the form of an advisory committee, which drew its membership from senior levels of umbrella organizations representing the larger consumer- and business- related interests. This committee, referred to as the Minister's Advisory Committee, was chaired by the Deputy Minister.

MANDATE OF THE COMMITTEE

The committee's mandate was:

- to review the project's strategy and provide input into the development, implementation and outcome of the project;
- to suggest modifications and other changes to the project and provide viewpoints of particular help in implementation of the project's mandate;
- to advise the Minister regarding the direction and outcome of the project.

COMMITTEE MEMBERSHIP

The following guidelines were established for selection to the committee:

- Members were approved by the Minister;
- Membership was kept relatively small to facilitate discussion and comment. Approximately 12 to 15 people, in addition to the chairperson and senior project personnel, were recommended;
- Membership was designed to reflect organizations with a broad interest in and experience with:
  - educating consumers and furthering consumer awareness;
  - seeking improvements to or proposing changes to consumer protection and business practices legislation;
  - furthering the inter-relationship among consumers, business and government in the interests of a fair and balanced marketplace.

The individuals and the organizations represented on the committee are listed in Appendix I.

The first meeting of the advisory committee was largely devoted to briefing the members on the mandate of the project and covering the areas of policy development under review. It was established that the industry-specific acts were best left to the review team, in consultation with specific interest groups. As well, it was determined that this committee's best role would be to synthesize the larger policy issues covered primarily in the foundation area.

DIRECTIONS PROPOSED BY THE COMMITTEE

This committee provided considerable relevant comment and direction on all aspects of the project. Highlights of the committee's discussions are as follows:

- There was general acceptance of the following definition of consumer:

  "Any physical person, acting on his/her own behalf, who is an acquirer or purchaser under a contract or transaction, the subject matter of which is credit,goods or services to be used primarily for the personal, family or household purposes and not for the purpose of producing revenue;"

- Changes to legislation need not be entirely interventionist. To be effective, however, matters such as disclosure of costs, advertising, recourse for consumers, warranties, etc., need strengthening to provide adequate consumer protection for both products and services;

- The concept of a "consumer bill of rights", to address the issues of consumer rights and responsibilities raised some concerns. It was felt that enshrining these expectations in legislation could serve to raise consumer expectations unreasonably high. After considerable discussion, it was believed that such rights and responsibilities should be stated in more symbolic terms in a preamble to the legislation rather than covered in a detailed, substantive manner in the text of the legislation;

- Product warranties raised a number of concerns. Although it was generally agreed that warranty laws needed to be strengthened, the question was raised as to the role and responsibilities of retailers in honouring warranties. Generally, the committee agreed that warranty legislation should be developed, and recommended that the wording of warranties be simplified as much as possible. As well, it was felt that warranty legislation should apply to both goods and services;

- The committee agreed with the broader philosophical framework for consumer protection proposed by the expert panel, which was:

    - reasonable information disclosure;
    - transactional fairness;
    - fair value;
    - access to just remedies and redress.

    However, the members also felt it was important to note that consumer education and awareness was a "constant priority" and that this concept should somehow be reflected in any statements and strategies;

- Another concept discussed and agreed to was the development of more philosophically appropriate mechanisms that would allow the Ministry to match the level of intervention with the severity of the marketplace problem;

- A consensus developed on an approach to resolving the problems related to refunds and exchanges. The committee felt that government should not develop a uniform policy on this issue; instead, it should require prior disclosure to consumers of the particular refund and exchange policies adopted by businesses;

- Discussions of the cooling-off period under the Consumer Protection Act concluded that the period should be extended beyond the current 48 hours; however, the committee was divided over what the longer timeframe should be. Committee members did agree that the period should be extended to at least five business days;

- Consumer awareness and outreach programs and the need for more educated consumers was a recurring theme in several of the meetings. At the very first meeting, for example, members stated their view that education and awareness should be the Ministry's highest priority, in order to ultimately ensure a fair and balanced marketplace. The committee also felt strongly that the introduction of any new legislation would require the Ministry to make an additional commitment to new and innovative consumer awareness and outreach programs;

- Members felt that many business operators and the sales staff in most organizations would also require special training, to make them aware of the impact of these new laws on their interaction with consumers;

- At the final meeting, in December 1987, the committee returned to the theme of education and awareness programs and made the following comments and suggestions:

- There is no point in developing new laws unless people will be informed about them;

- A goal of the Ministry should be to prepare people for marketplace fitness. Along this line, it was felt to be important that the Ministry teach people to be wary. Let them know that there is new legislation, but that it will not protect them in every situation;

- It was suggested that all the consumer rights in the world are useless without literacy. The short term solution is to get more information to the illiterate through radio and TV announcements. The long-term solution is to provide basic consumer information to those who teach basic reading skills. This would not only help the illiterate consumer of today, but also contribute to the long-term goal of having a higher literacy rate in our society;

- Consultations must be held with the physically disabled. A great deal of their equipment comes from international suppliers and much of the equipment is not covered by medical insurance. As well, adjustments such as those to motor vehicles and vans for disabled drivers and passengers are frequently not done by the manufacturers' authorized dealers and are therefore not covered by manufacturers' warranties;

- To reach the more vulnerable consumer, the Ministry should use every available avenue that is presently open. These sources may also be useful in suggesting appropriate ways to communicate information to vulnerable consumers;

- It was suggested that there are two basic levels of consumer education and awareness:

  The 1st level is - consumer education at the public, high school and university levels.
  The 2nd level is - information disclosure, before and at the time of the transaction;

o At present, consumer education courses in the school system are optional. Ideally, consumer education should be included as part of the basic social studies courses. It was felt that there should be a certain number of hours per year allocated to consumer education. It was suggested that the Ministry of Consumer and Commercial Relations should consult with the Ministry of Education to address this issue;

o Consumer education could be part of the life skills courses in elementary school, and in the community courses geared to vulnerable groups. It was also suggested that the Ministry of Consumer and Commercial Relations should work with the Ministries of Community and Social Services, Health, and Education to address these needs;

- It will be important to educate businesses about their obligations and responsibilities under any new legislation. For example, they will need to be told what information they need to supply to consumers at the time of the sale;
- It was suggested that larger business organizations should accept more responsibility for education than small business. The Ministry should consider providing more help in this regard to the small business operator. Another suggestion was that some opportunities might exist for joint ventures, i.e. consumer awareness programs sponsored by both government and interest groups;
- Another suggestion was that the Ministry should involve volunteer groups in the consumer education process. In addition, it was suggested that the Ministry put more money into its education and awareness programs. "Either do it well or don't do it at all" was the general view;
- The members felt there would be considerable merit in continuing to use the Consumer Advisory Panels, particularly in seeking new methods of communicating with vulnerable groups and in the more remote regions of the province;
- It was suggested that the Ministry should develop or assist in the development of an "Institute for Consumer Research and Education". Such an institute could:
    - fund selected, applied research, encouraging multi-disciplinary collaboration among universities/colleges, business, government and consumer groups;
    - provide grant money to organizations that apply to undertake pilot research or education projects.

SECTION II - REGIONAL CONSUMER ADVISORY PANELS

BACKGROUND

These panels, described in the section on research initiatives, also provided an important consultative element to the project.

Consumer advisory panels are a relatively recent adaptation of the focus group concept widely used in the marketing and public relations fields. The Regional Consumer Advisory Panels were a further adaptation of this concept and provided an innovative approach to consultation with consumer interest groups.

Details of the process, which involved 39 organizations in six cities (see Appendix II), have already been described in the research section. The main point is that the panelists selected were among the opinion leaders of their communities. It was felt that through them, the project team would be able to gain the views of a much larger constituency, thereby gaining the broadest understanding of community concerns. This provided an important body of qualitative research to the project.

SUMMARY OF THE DIRECTIONS PROPOSED BY THE PANELISTS

The key directions proposed by the panelists in their recommendations may be summarized in the following groupings:

1) Specific Issues/Legislation
2) Consumer Information/Awareness
3) Ministry Accessibility

A) DIRECTION REGARDING SPECIFIC ISSUES OR LEGISLATION

1) Standardized contracts for many high priced products or services should be written in layman's language; this requirement should be legislated.

2) Full disclosure, as well as an explanation of all costs and conditions, should be a legislated requirement for all major products and services.

3) The two-day "cooling-off" period under the Consumer Protection Act should be extended to between 5 and 10 days and the conditions should be clarified. As well, it was recommended that cooling-off periods should apply to a wider range of retail transactions; for example, autos and appliances.

4) Legislation was recommended to improve current refund and exchange policies. It was noted that all companies and stores should also be more thorough in informing the public of their policies.

5) Consideration should be given to requiring that money paid in advance for all goods and services be held in trust until the goods or services are received.

6) Legislation should state that credit limits may only be extended by specific request of the cardholder.

7) Credit granters or credit bureaus should notify consumers when credit checks are being made.

8) Licensing and/or accreditation o both the self-named financial consultants, and fitness/nutrition consultants was recommended.

9) The Ministry should consider one consumer protection law which would summarize the overwhelming number of consumer laws in Ontario, similar to the Quebec Consumer Protection Act. It should be written in layman's terms.

10) The use of warranties as a marketing tool was criticized. It was proposed that disclosure of the terms of warranties be standardized to more easily articulate the responsibilities of the consumer and the actual warranty coverage.

B) DIRECTION REGARDING CONSUMER INFORMATION AND AWARENESS

1) The Ministry of Consumer and Commercial Relations should continue to provide basic consumer tips via television and radio advertising. Ideally, this could be done during prime time and on both major networks and multi-cultural networks in order to be assured of the widest audience.

2) The Ministry of Consumer and Commercial Relations and the Ministry of Education should work in cooperation to re-introduce consumer education courses in the school system, not only at the elementary and high school levels, but also in the community colleges.

3) The Ministry should work with businesses through their trade associations to assure an awareness of consumer rights and responsibilities on the part of salespeople.

4) Consumer education and information programs should be developed to reach the more vulnerable consumers. These programs should be carried out through agencies serving the various interest groups.

C) DIRECTIONS DEALING WITH MINISTRY ACCESSIBILITY

1) Any new laws developed should provide enough "teeth" so that both consumers and Ministry complaint handlers are better able to obtain recourse. The panelists frequently questioned why consumer protection laws exist if the only recourse is through the courts.

2) The Ministry should maintain closer contact with, and provide more information to other community help agencies

through newsletters, forums and other communications methods geared to the community.

3) The Ministry should continue the use of consumer panels as a means of keeping abreast of community perspectives across the province.

4) Actual complaint handling could be centralized. Regional offices could then be used more as a resource centre for the community.

5) The Ministry should expand toll-free services from outlying areas to the nearest regional office. As well, telephone service to the Regional Consumer Service Bureaus and the toll-free lines to the Consumer Information Centre in Toronto should be increased by adding more lines.

6) The Ministry should be more accessible in terms of providing assistance to consumers seeking help in specific areas, such as with home improvement contractors.

7) Requirements for written complaints should be waived in cases when the consumer genuinely needs help due to functional illiteracy, language and physical problems.

8) Any new laws should be written in plain language, or plain language summaries of the laws should be made available.

9) Government should provide more services and information in French. When the material is in written form, it would be preferable to use a bilingual format.

10) The bilingual staff in the Thunder Bay, Sudbury and Ottawa Consumer Service Bureaus should be increased.

CONCLUSIONS

The two consulting firms commissioned to conduct these panels and the project staff each formed a number of independent conclusions from the wealth of information gained from these meetings. By far the most obvious and most significant conclusion was that the Ministry should consider the ongoing use of such panels.

It is believed that these panels would be of considerable assistance to the Ministry in a number of areas. In particular, they would:

o provide ongoing communications among the communities represented by the panels, the Regional Consumer Services Bureaus in those cities, the Communications Branch and other branches of the Ministry;

- provide a testing ground for the Ministry's public information and education programs;
- provide a resource through which any new legislation or programs could be more effectively communicated within these regions and communities;
- provide a sounding board for seeking solutions to new issues and problems as they arise. (This suggestion ties in with the Citizens' Advisory Council, as proposed in the Consumer Education and Awareness section of the report).

A second key direction, proposed by the consulting firm of E.M. O'Neil and Associates, was that formation of an inter-ministry committee be investigated. Its mandate would be to focus on consumer education and information programs across Ontario ministries. Membership could be drawn from such ministries as Consumer and Commercial Relations, Citizenship, Community and Social Services, Agriculture and Food, Northern Development and Mines, Energy and Environment. A working committee could be struck, to identify and evaluate:

- current education and information materials available from member ministries;
- client groups to whom the materials are distributed;
- current needs of specific groups of consumers, for instance, the elderly, the physically disabled, newcomers to Ontario, and the functionally illiterate;
- future needs of these and other populations, given the changing structure of the marketplace.

SECTION III - CONSULTATION WITH SPECIAL INTEREST GROUPS

BACKGROUND

In planning an approach to consultation, it was important to reach the organizations serving the more vulnerable consumer segments. These were identified as including the frail elderly, the physically and emotionally handicapped, functionally illiterate, and those who, due to language, cultural or regional differences, might need special consideration when developing new legislative initiatives for the marketplace of tomorrow.

HIGHLIGHTS

Considerable consultation occurred with representatives of the departments and agencies serving these special interest groups. Some of the special needs are addressed elsewhere in this report; however, the following points give a general sense of the insight gained from these discussions:

- Special efforts, by way of education and awareness programs, are needed to make these groups aware of their rights and responsibilities, in preference to legislating measures which might only serve to isolate them further;

- Simplification of the laws and of the Ministry's information materials was thought to be important. Broader distribution of such information directly to the communities, through specialized newsletters, ethnic press and other existing publications were among the suggestions made;

- Measures should not be introduced if they would appear to segregate the more vulnerable consumer. These consumers need and want to be a part of the mainstream to as great an extent as possible. Their special needs should be addressed in ways that help them remain a part of it;

- Contractual arrangements and warranties, and hence consumer protection laws generally, must take into consideration the fact that major products and services for the most vulnerable consumer are often purchased by a third party. This is particularly true of handicapped consumers;

- There is a need to provide more French language services, particularly in Northern Ontario. It is also necessary to reach native populations in their languages (particularly Ojibway in the north).

SECTION IV - CONSULTATION WITH INDUSTRY/CONSUMER/COMMUNITY INTEREST GROUPS

BACKGROUND

As stated earlier, a major commitment of the Legislative Review Project was to consult with all the interest groups that might be affected by any new legislation. To accomplish this, lists were developed of all of the key organizations representing the major interest groups. They included:

- large umbrella organizations;
- legal and academic communities with business, law and consumer studies courses;

- business and industry associations;
- consumer, community and social service groups, including agencies and associations serving the elderly, physically disabled, etc. The more vulnerable groups are dealt with in the foregoing section of "Consultation with Special Interest Groups".

PROCESS

Each organization received an invitational letter from the Minister or project director, encouraging comment, input and suggestions for the process of legislative review. The information outlined the main areas of legislation under review and invited these groups to submit briefs or otherwise comment on the directions which they believed would improve the relationship between consumers and business in today's marketplace and on into the 21st century.

In total, more than 50 organizations submitted one or more written briefs. More than 100 formal meetings were held with various interest groups. In addition, a tremendous number of informal consultations with individuals and groups took place. The formal responses and consultation meetings are further detailed in Appendix III.

It would be impossible to summarize in this section the wealth of information, suggestions and comments obtained from this consultative effort. However, all material received, either in writing or verbally, was given due consideration by the project team, and incorporated into the analysis wherever possible. Refer to the chapters on foundation or industry-specific direction for more detail.

SECTION V - CONSULTATION WITH EXPERT PANELS

a) Philosophy and Principles

A separate supplementary report describes the mandate, structure, and makeup of this panel, as well as the process by which it arrived at a philosophy and principles. It is mentioned in this section only in the sense that the individuals on this panel formed an important consultation group, particularly given the level of their interest in and knowledge of consumer protection and business practices issues.

b) Industry-Specific Expert Panels

In each of the regulated areas such as Automobiles, Condominiums, Cemeteries, Death Care, Real Estate and Travel, expert panels were formed, including key representatives from industry, consumer associations, the Ministry and the project team assigned to the specific industry review. These consultation meetings ranged in number and length, although the average was two all-day meetings. Discussions focused on what were felt to be the key issues and the possible solutions to problem areas. This consultation process is addressed in the various industry- specific chapters, and the briefs submitted in conjunction with the meetings are noted later in this supplementary report.

c) Consumer Experts

The project team relied extensively on the issue specific experts of the Consumers' Association of Canada, both in terms of their briefs to the project and their involvement in numerous panels, meetings and conversations. They accepted their position as the only national voluntary organization of consumer advocates very seriously. They are to be commended for the amount of work they voluntarily and willingly undertook throughout the project.

d) Business Practices Division Experts

Throughout the project, team researchers consulted extensively with senior divisional management, registrars, legal counsel, investigators, compliance officers and the consumer services officers in the eight regional offices of the division. These consultations proved invaluable in gaining, firsthand, an appreciation of the areas of legislation which were most effective, as well as those which were not helpful in resolving problems or in stopping unfair business practices. There continued to be consultation and discussion with many of these officers throughout the project.

APPENDIX I

MINISTER'S ADVISORY COMMITTEE

Judith Andrew
Director of Provincial Affairs - Ontario
Canadian Federation of Independent Business

Barbara Beck
Past President
Consumers' Association of Canada (Ontario)

Edward Belobaba
Lawyer
Gowling and Henderson, and
Professor on Leave
Consumer and Commercial Law
Osgoode Hall Law School

Havi Echenberg
Executive Director
National Anti-Poverty Organization

Julien Guernon
President
Canadian Council of Better Business Bureaus

David Hopkins
Vice-president
Ontario Chamber of Commerce

Joyce King
President
The United Senior Citizens of Ontario

Marianne King-Wilson
President
Canadian Society of Consumer Affairs Professionals

Linda Lalonde
Past Chairperson
Ontario Association of Legal Clinics

Jean Lane-Davis
Executive Director
Association of Community Information Centres in Ontario

Serge Plouffe
President
Association canadienne-française de l'Ontario

Denis Sexton
Vice-president
Ontario Federation of Labour

Richard Vosburgh
Professor, Consumer Studies
University of Guelph

APPENDIX II

REGIONAL CONSUMER ADVISORY PANELS

ORGANIZATIONS REPRESENTED BY PANEL MEMBERS

Association canadienne-française de l'Ontario
Association of Community Information Centres of Ontario
Association of Indian Friendships Centres
Catholic Charities
Community Legal Clinics
Community Legal Education - Ontario
Consumers' Association of Ontario
COSTI - IIAS Immigrant Services
Council of Low Income Support Services
Federated Women's Institutes of Ontario
Fédération des femmes canadiennes-françaises de l'Ontario
French Canadian Entraide Budgetaire
Handicapped Action Group
Legal Aid
Metro Tenants Legal Services
National Anti-Poverty Organization
Ontario Association of Credit Counselling Services
Ontario Association of Family Service Agencies
Ontario Association of Legal Clinics
Ontario Association for Community Living
Ontario Association of Professional Social Workers
Ontario Coalition of Senior Citizens Organizations
Ontario Federation of Labour
Ontario Home Economics Association
Ontario Métis and Non-Status Indian Association
Ontario Native Council on Justice
Ontario Native Women's Association
Ontario Public Interest Group
Ontario Social Development Council
Regional Planning Councils
Regional Public School Boards
Regional Separate School Boards
Social Sciences and Humanities Research Council of Canada
Union culturelle des franco-ontariennes
United Senior Citizens of Ontario Inc.
Universities - Consumer Studies, Business, Law
Women for the Support of Agriculture
Women for the Survival of Agriculture
Women and the Ethnic Community

APPENDIX III

RESPONSE FROM INDUSTRY, CONSUMER AND COMMUNITY ORGANIZATIONS

BRIEFS SUBMITTED

Alliance of Canadian Travel Associations
Anglican Diocese of Toronto
Associated Credit Bureaus of Ontario
Association of Canadian Financial Corporations
Association of Condominium Managers of Ontario
Association of Municipalities of Ontario
Avon Canada Inc.
Board of Funeral Services
Canadian Association of Tour Operators
Canadian Bankers' Association
Canadian Bar Association
Canadian Condominium Institute
Canadian Institute of Travel Counsellors
Canadian Jewish Congress
Canadian Manufacturers' Association
Canadian Paraplegic Association
Canadian Pensioners Concerned
Cataraqui Cemetery Company (Kingston)
Commonwealth War Grave Commission
Consumers' Association of Canada (Ontario)
Credit Counselling Service of Metropolitan Toronto
Direct Sellers Association
Evangelical Lutheran Church in Canada
Federation of Ontario Memorial Societies
Hamilton Municipal Cemeteries
Home-Aid
Institute of Chartered Accountants of Ontario
Memorial Gardens (Ontario) Ltd.
Mennonite Central Committee
Ontario Advisory Council on Senior Citizens
Ontario Association of Cemeteries
Ontario Association of Monument Builders
Ontario Automobile Dealer Association
Ontario Catholic Cemeteries Conference
Ontario Funeral Service Association
Ontario Genealogical Society
Ontario Home Builders' Association
Ontario Movers Association
Ontario Real Estate Association
Ontario Society of Collection Agencies
Park Lawn Cemetery Company Ltd.
Pentecostal Assemblies in Canada
Presbyterian Church in Canada
Retail Council of Canada
The Last Minute Club, Inc.
Toronto Automobile Dealers Association
Toronto Hebrew Benevolent Society
Toronto Trust Cemeteries
Trillium Funeral Services Inc.
United Church of Canada

United Senior Citizens of Ontario
Urban Development Institute
Used Car Dealers Association
Woodland Cemetery (Kitchener)

OTHER CORRESPONDENCE AND COMMENTS RECEIVED

American Express of Canada, Inc.
Arbitrators' Institute of Canada, Inc.
Association of Professional Computer Consultants - Ontario
Attractions Ontario
Blake, Cassels and Graydon, Barristers, Solicitors and Patent and Trade Mark Agents
Board of Trade of Metropolitan Toronto
Canadian Advertising Foundation
Canadian Association of Women Executives and Entrepreneurs
Canadian Automotive Leasing Association
Canadian Credit Institute
Canadian Federation of Independent Business
Canadian Hardware and Housewares Manufacturers Association
Canadian Hearing Society
Canadian Society of Consumer Affairs Professionals
Council on Aging
Credit Granters Association of Canada
Dry Cleaners and Launderers Institute (Ontario)
Energy Conservation Contractors Warranty Corporation
Equifax Services Ltd.
Federation of Automobile Dealer Associations of Canada
Honourable Pamela Thomson Sigurdson, Provincial Court Judge, Civil Division
Honourable S.D. Turner, Provincial Court, Chief Judge
Institute of Association Executives
Institute of Chartered Accountants of Ontario
Law Society of Upper Canada
Minister for Senior Citizens' Affairs
Minister Responsible for Native Affairs
Ministry of Agriculture and Food
Ministry of the Attorney General
Ministry of Community and Social Services
Ministry of Culture and Communications
Ministry of Environment
Ministry of Health
Ministry of Housing
Ministry of Municipal Affairs
Ministry of Revenue
Ministry of Solicitor General (Coroners Office)
Ministry of Transportation and Communications, Human and Social Factors Office
Motor Vehicle Manufacturers' Association
Office Responsible for Disabled Persons
Ontario Association of Credit Counselling Services
Ontario Association of Medical Laboratories
Ontario Home Inspectors
Public Interest Research Centre

Queen's University
John Swaigan, Lawyer
University of Western Ontario
University of Windsor
University of Ottawa

MEETINGS AND DISCUSSIONS

Action League of Physically Handicapped Adults
Advertising Standards Council
Advocacy Centre for the Elderly
Alliance of Canadian Travel Associations, Ontario
American Express of Canada, Inc.
Arbitrators' Institute of Canada
Associated Credit Bureaus of Ontario
Association of Canadian Financial Corporations
Association of Canadian Franchisors
Association of Community Information Centres of Ontario
Association of Condominium Managers of Ontario
Association of Municipalities of Ontario
Auctioneers Association of Ontario
Automobile Importers of Canada
Automotive Aftermarket Retailers of Ontario
Automotive Protection Association
Board of Funeral Services
His Honour R.L. Bradley, Judge, Provincial Court
 Civil Division
Canadian Association of Financial Planners
Canadian Association of Tour Operators
Canadian Automobile Association
Canadian Automobile Manufacturers Association
Canadian Automotive Leasing Association
Canadian Banker's Association
Canadian Condominium Institute
Canadian Council of Better Business Bureaus
Canadian Federation of Independent Business
Canadian Hearing Society
Canadian Importers Association
Canadian Institute of Travel Counsellors
Canadian Life and Health Association
Canadian Manufacturers' Association
Canadian Radio-Television and Telecommunications Commission
Commonwealth War Graves Commission
Community Legal Education Ontario
Consumers' Association of Canada (Ontario)
Council of Ontario Contractors Association
Council of Senior Citizens and Handicapped
COSTI-IIAS Immigrant Services
Credit Granters Association of Canada (Toronto Chapter)
Direct Sellers Association
Federation of Automobile Dealer Associations of Canada
Federation of Ontario Memorial Societies
Guaranteed Funeral Deposits of Ontario
G.W.C. Consulting Group Inc.

Lawrence Gold, Lawyer
Institute of Association Executives
Institute of Chartered Accountants
Insurance companies (several)
Kingston and area cemeteries, funeral directors
Memorial Gardens (Ontario) Ltd.
Minister for Senior Citizens' Affairs
Ministry of Agriculture and Food
Ministry of the Attorney General
Ministry of Community and Social Services
    Elderly Services Branch, Facilities for the Developmentally Handicapped, Family Support Branch, Income Maintenance Branch, Services for the Disabled Branch Strategic Planning and Intergovernmental Relations
Ministry of Culture and Communications
Ministry of Education
    Franco-Ontarian Education
Ministry of Environment
Ministry of Financial Institutions
Ministry of Health
Ministry of Housing
Ministry of Municipal Affairs
Ministry of Revenue
Ministry of Skills Development
Ministry of the Solicitor General (Office of the Fire Marshall)
Ministry of Tourism and Recreation
Motion Picture Projectionist Union
Motor Vehicle Manufacturers' Association
Motorcycle and Moped Industry Council
National Anti-Poverty Organization
National Association of Fleet Administrators
Office for Senior Citizens' Affairs
Office of the Public Trustee
Ontario Advisory Council on Senior Citizens
Ontario Advisory Council on the Physically Handicapped
Ontario Arts Council
Ontario Association of Legal Clinics
Ontario Association of Cemeteries
Ontario Automobile Dealer Association
Ontario Chamber of Commerce
Ontario Councils of Agencies Serving Immigrants
Ontario Federation of Memorial Societies
Ontario Funeral Services Association
Ontario Home Builders' Association
Ontario Hydro
Ontario Medical Association
Ontario Monument Builders Association
Ontario Motorcycle Dealers Association
Ontario Real Estate Association
Ontario Recreational Vehicle Dealers Association
Ontario Society of Collection Agencies
Ontario Women's Directorate
Peterborough Automobile Dealers Association
Referees of the Small Claims Courts
Retail Council of Canada

Ryerson Polytechnical Institute School of Food, Nutrition, Consumer and Family Studies
Secretariat for Disabled Persons
Toronto Automobile Dealers Association
Toronto Car Auction
Toronto Trust Cemeteries
Trust companies (several)
Her Honour Pamela Thomson Sigurdson, Judge, Provincial Court Civil Division
United Senior Citizens of Ontario
University of Windsor
Urban Development Institute

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5. Development of a Framework of Philosophy and Principles

DEVELOPMENT OF A FRAMEWORK OF PHILOSOPHY AND PRINCIPLES

BACKGROUND

One of the three major responsibilities of the project was to develop one consistent view of the marketplace. This perspective would provide the project with a framework and parameters within which to examine the existing legislation and to shape the analysis and proposed direction. What was needed was a philosophy and set of principles to guide the overall approach to assuring consumer protection and fair business practices in Ontario.

As well, the existence of such a philosophy and set of principles could eventually be incorporated into the preamble to the foundation legislation, which would define the purpose and intent of the final statutes. This would assist others (for instance, courts) in interpreting the statutes and regulations if any ambiguity or gaps became evident.

As stated before, the Ministry's definition of its own purpose and values showed the direction the philosophy should take. The Ministry has defined its purpose as the encouragement of an "honest and equitable" marketplace - that is, a "level playing field" - that will benefit both consumers and commerce. It has rejected both a "buyer beware" approach, at one extreme, and a "big brother" approach, at the other. Clearly, consumer legislation must reflect this perspective.

Any new legislation should also reflect optimal consumer protection balanced with the realities of the need for a growing and innovative economy. The balance should be further reflected in the ministry's role in the marketplace and the manner and extent of any intervention (a later chapter discusses intervention philosophy in more detail).

From the very beginning, the development of a philosophy and set of principles was seen as being comprised of two parts:

- the eventual content (i.e. the philosophy/principles);
- the process or means by which the content would be formulated.

PROCESS

In theory, it would be possible to select any three people who were knowledgeable about the legislation and the activities of the division, lock them in a room, and have them emerge at the end of the day with a set of principles and a broader philosophy. It would undoubtedly be as acceptable a product as that produced by any three other reasonable and knowledgeable people, subjected to the same process.

Thus, a key to the development of an acceptable philosophy was who was involved, as well as how the philosophy was to be developed, and what the final philosophy was.

The idea of using an expert panel was considered and adopted. Several people from across the province, who had a recognized background in the area of consumer protection, were invited to sit on the panel. The panel consisted of:

1) Mr. Iain Ramsay, lawyer and visiting Professor of Law at the Osgoode Hall Law School;
2) Dr. Neil Vidmar, psychologist and Professor of Psychology at the University of Western Ontario;
3) Mr. Jacob Ziegel, lawyer and Professor of Law at the University of Toronto Law School;
4) Mr. Edward Belobaba, lawyer with the Gowling and Henderson law firm and law professor on leave at Osgoode Hall Law School;
5) Mr. Ralph Lewis, lawyer and Senior Legal Policy Advisor with the Business Practices Division of the Ministry;
6) Dr. Gregory Mazuryk, psychologist, M.B.A., and Project Director of the Legislative Review Project.

Assisting the expert panel were two outside consultants. Orientation packages and questionnaires (designed to lead to consensus in terminology and certain topic areas) were mailed out in early 1987. A two-day formal first meeting was arranged for the latter part of February. A series of half-day meetings followed.

All participants contributed significantly over the months of constant debate and discussion. Initially, expert panel members approached the task with different viewpoints and levels of generality.

Within the first two days, however, two major themes began to emerge:

1) The marketplace is a set of on-going systems. Attention to these systems,and how they relate to one another, would assure a fair marketplace for both consumers and business;

2) The principles resulting from a fair marketplace philosophy should reflect the components of a consumer-to-business transaction.

DELIBERATIONS: A FAIR MARKETPLACE

In a fair marketplace environment, there is a wide variety of transactions between the consumer and the seller of goods or provider of services. In many instances, transactions conclude to the benefit and satisfaction of both parties. Successful transactions reflect both the natural dynamics of a competitive marketplace and the external intervention which establishes certain expectations. When a transaction fails to satisfy one party, that means there has been a failure in the fair marketplace system, because of ambiguity in, or the absence of, certain mechanisms, rules or procedures.

The challenge to consumers, businesses and the government is to explicitly create, maintain, and - as an on-going priority - enhance marketplace fairness. In a rapidly changing marketplace, vigilance is essential to ensure the on-going introduction of measures that accommodate the realities of change. Change must not only encompass the increasingly competitive nature of business and the introduction of new technologies and services, but also the existence and increasing participation of consumers demonstrating a range of vulnerabilities.

Such enhancements to ensure marketplace fairness should not always be traditional and unimaginative; instead, they should be proposed in a spirit of dynamic and confident innovation. Therefore, one must re-think traditional relationships, and test and challenge present assumptions and approaches. It will mean acknowledging that no single approach can be expected to work under all circumstances and that flexibility of approach must be a major commitment. Because different problems may require different responses, the strength of any intervention should be proportional to the severity of the problem.

Constant experimentation will also be needed, to continually adapt the marketplace to the changing and increasingly complex environment of today and tomorrow.

DELIBERATIONS: THE PRINCIPLES OF A FAIR MARKETPLACE

A fair marketplace, as envisioned, is based on four fundamental and inter-dependent principles:

- Reasonable information disclosure;
- Transactional fairness;
- Fair value;
- Access to remedies and redress

Although the four principles are essential to both the perception and actual reality of fairness in the marketplace, the principle of access to remedies and redress is also seen as essential to ensuring the viability of the three other principles.

The principle of reasonable information disclosure reinforces the need, in a fair marketplace, for an informed consumer to be provided with, or to otherwise be able to obtain, enough information to make a rational decision between choices. What constitutes "reasonable" information will vary, depending on the product or service, the availability of the information and the language it is conveyed in, the medium chosen to deliver the information, and so on. However, all must converge to assure enough information for a rational decision to be made.

Balancing the responsibility for assuring reasonable information disclosure must also be considered. The average consumer cannot remain a passive player but must take steps to obtain and understand the information, determine its adequacy, and so on. The balance of responsibility may shift to business, however, when the consumer cannot be expected to take the normal steps required in obtaining and understanding the information. A blind person, for example, may require more assistance in having a product described to him or her. A developmentally handicapped consumer may need more attention and patience to ensure that the product or service is appropriate.

The principle of transactional fairness follows the first principle in the transaction continuum and pertains to the circumstances and practices surrounding the "deal". Transactional fairness requires that a consumer has a clear and unbiased understanding of the deal. This includes consistency between what was promised (orally) and what is reflected in contracts and written warranties; fair notice of any onerous or unusual contractual clauses; and safeguards against non-disclosure and negligent omissions.

The transactional fairness principle also assumes that the consumer will be allowed a reasonable amount of time to make a decision, free from high pressure or an environment or conditions that may make the consumer vulnerable.

In balance, it is also expected that the average consumer will behave reasonably and take certain steps to understand the environment and contractual conditions of the deal.

The principle of fair value addresses the relative outcome of the transaction. Fair value means getting what was expected. Fair value expectations are created as a result of reasonable information disclosure, transactional fairness,and the consumer's assumption that the price paid implies a certain level of quality.

When the created expectations match what is actually received (goods and/or service), then fair value is realized. Still, particularly given the quality versus price expectations, some element of risk is recognized and must be taken into consideration when choices are made. However, when what was expected differs significantly from what was eventually received, other mechanisms are required.

The fourth principle of access to just remedies and redress acknowledges that disputes arise when fair value expectations are not realized. Sufficient, timely and accessible avenues must be available to the consumer to assure just dispute resolution.

Such resolution mechanisms are a cornerstone of consumer protection. In general, just resolution requires an understanding of acceptable marketplace behaviour on the part of both consumers and business, and recognizes that the rights and reasonable expectations of both parties must be protected. Also, resolution of disputes should normally result from the consumer and business first attempting to resolve the complaint themselves. Involvement and intervention of outside parties should only be considered when the consumer and business fail to resolve the dispute, and it should be in a manner proportionate to the seriousness of the situation.

ROLE OF GOVERNMENT

The primary role of government is to protect consumers through the assurance of a fair and equitable marketplace. With this role is the added commitment to continually review, evaluate and enhance the marketplace systems to ensure the existence of the most equitable and workable marketplace.

Government needn't view itself as functioning independently in this role; instead, it should involve all other sectors in developing and implementing fair marketplace enhancements. As part of the maintenance of a fair marketplace, the government should also continue its role of keeping out the less desirable, individual industry players from the fair marketplace environment or, if in, to remove them.

Most importantly, all parties must commit themselves to ensuring informed and educated consumers and businesses. Education includes understanding one's role, rights and responsibilities, the procedures and rules, and expected behaviour. To facilitate that understanding, the rules must be set out in plain, comprehensible language.

Ultimately, education, more than any other factor, will assure optimal consumer protection and acceptable business practice in the fair marketplace of Ontario.

6. Structure of Proposed Legislation

STRUCTURE OF PROPOSED LEGISLATION

One of the realizations discussed earlier, in the introduction, was the need for two qualitatively different types of legislation. One type would set generic expectations of the marketplace, while the other addressed the unique requirements of certain industry areas. Together, they would form "omnibus-like" legislation. Organized in this way, it would be comprehensive, consistent, and amenable to more rapid change, if needed.

The new legislation would improve and re-organize the existing 20 acts, outlined earlier, while also containing statutes and regulations governing new business-consumer transactions and industry areas.

The supplementary reports summarize proposed direction for legislative change in many areas. These areas are organized into two major groups: Proposals leading to foundation legislation, and those that would lead to modifications of existing industry-specific legislation. A later supplementary report will discuss a possible process that may be used to relate these two groupings.

Each group, in turn, may have five subgroupings. For instance, proposed direction leading to foundation legislation may be organized in the following way:

1) **General purpose; rights and responsibilities of the consumer; education as a priority; intervention philosophy;**

2) **General standards and expectations of the marketplace and transactions therein;**

3) **The required regulatory framework, including alternate measures to resolve disputes and better consumer relief;**

4) **Specific marketing practices used in consumer-business transactions;**

5) **Credit and related areas.**

These five areas may come together to produce one or two pieces of legislation. The proposals in the regulatory framework section may be combined into one act, with the proposals from the other four sections combining to form the more comprehensive Consumer Protection Code.

Direction leading to revised industry-specific legislation is organized into the areas of:

1) **Home purchases (condominiums, new homes, buying and selling homes), and home improvements;**

2) Motor vehicle purchase and sale, maintenance and re-sale;

3) Travel services;

4) Deathcare (prepaid funeral services and cemeteries);

5) Entertainment (theatres and athletics control - the social gaming area was earlier decided not to be part of the review project's scope).

The eventual number of industry-specific acts is difficult to estimate. That is because it is not known what will result from the relating exercise between foundation and industry-specific direction, or the degree to which the foundation legislation will be able to generically accomodate the expectations set for a fair marketplace. Still, it is expected that no more than ten industry-specific unique acts will result.

7. Three Statutes which could be Transferred to other Ministries - The Discriminatory Business Practices Act, the Bailiffs Act, the Paperback and Periodical Distributors Act

THREE STATUTES WHICH COULD BE TRANSFERRED TO OTHER MINISTRIES - THE DISCRIMINATORY BUSINESS PRACTICES ACT, THE BAILIFFS ACT, THE PAPERBACK AND PERIODICAL DISTRIBUTORS ACT

Although examination of the twenty pieces of existing legislation was one very significant part of the larger project endeavour, not every piece was given equal and/or on-going consideration.

Two of the acts are very narrow in scope, dealing with one specific issue or activity, so they could be easily accommodated as a small section in any newly drafted legislation. The two statutes are: The Debt Collectors Act, and the Residential Complex Sales Representation Act.

More importantly, three acts of larger scope were questioned as to their appropriateness within the division and Ministry. The three are:

A) Discriminatory Business Practices Act;

B) Bailiffs Act;

C) Paperback and Periodical Distributors Act.

The three acts will be discussed here and not dealt with in any detail in the remainder of the supplementary reports.

A) The Discriminatory Business Practices Act

The Discriminatory Business Practices Act was enacted in 1978 primarily in response to the Saudi Arabian boycott of Israeli products; a boycott which still exists to this day.

Saudi Arabian businesses were adding clauses in contracts with Ontario businesses, forbidding them to hire Jewish people or use Israeli products in their manufacturing processes. The Ontario government found this practice unacceptable and so passed the act.

In addition to prohibiting the use of discriminatory clauses, the act also requires that Ontario businesses report the use of such clauses. In order to comply with the act, Ontario businesses must subsequently refuse to enter into such contracts until the offending clauses are deleted.

The act was introduced in the House by the then-Premier and carried through committee by the then-Attorney General. The Minister of Consumer and Commercial Relations at the time was not actively involved with the passage of the bill.

The Legislative Review Project was concerned with having the Ministry responsible for the administration of the act.

There were two basic reasons.

First, the Act is human rights-oriented, as opposed to being related to consumer protection. For example:

> In committee, the then-Attorney General of Ontario, the Honourable Roy McMurtry, described the act in the following manner:
>
> "It is legislation that is directed at the basic human rights of individuals residing within the province of Ontario. We are simply saying by this legislation that citizens of Ontario, regardless of their country of origin, race, creed, colour, nationality, ancestry or geographical location, should not be discriminated against in carrying on businesses."

The question of where the Act should reside was debated at the time. Justification for the act being part of the administrative responsibility of the Ministry of Consumer and Commercial Relations lay primarily in its similarity to the Business Practices Act. Both statutes provide for assurances of voluntary compliance and cease and desist orders. Both statutes establish an appeal process to the Commercial Registration Appeal Tribunal. Both statutes endow the Ministry with the same investigative powers for following up complaints. As explained by counsel, while the bill was in committee, the act "is very closely allied to the Business Practices Act of 1974. Inasmuch as the administrative machinery is established under the Business Practices Act, it is to avoid the duplication of machinery and avoid any enlargement of the civil service in the administration of this act".

However, also in committee, at the time, a spokesperson for the Council of the Ontario Status of Women stated that:

> "I consider this bill belonging with other human rights legislation. Enforcement of such a law will require an experienced staff to handle the complaints with sensitivity and swiftness. This expertise and experience presently exists within several areas of the Ministry of Labour and within the Ontario Human Rights Commission. It would seem to be an unnecessary duplication of human resources to have the implementation of this bill under a different ministry than the Ministry of Labour. We are not criticizing the consumer ministry but we do know that it is a business ministry set up to handle business and has not been set up in the area of human rights."

A second concern of the project regarding the placement of the act within the division relates to the more general issue of the Ministry's role in setting expectations between businesses. The focus the Legislative Review Project adopted was on business-to-consumer interactions for optimal consumer protection. The Business Practices Division, as well, was concerned that it was being increasingly drawn into setting expectations for business-to-business relations (e.g. franchising, "first opportunity business" ventures) as opposed to dedicating its resources to ensure fair marketplace practices for consumers.

One of the options considered by the project and eventually recommended is to transfer the act to the Ministry of Labour.

As a final note, the Discriminatory Business Practices Act is presently administered by the Business Regulation Branch of the division. Regulatory activity is very low. Since the act's passage, no complaints have been filed, no AVC's have been entered into, no orders of cease and desist have been issued, and no criminal charges have been laid (Ministry Annual Reports 1979-1986). It was estimated that branch staff spend approximately 100 hours per year on the administration of the act.

B) The Bailiffs Act

The Bailiffs Act, addressing private bailiffs, was proclaimed in force in 1941. The legislation has been amended from time to time. However, no serious revision of the legislation has occurred since 1960, when it was transferred to the present Ministry from the Ministry of the Attorney General. Actual reasons to justify the transfer are not known. There was, however, speculation which, if true, did not justify the transfer.

In the act, "bailiff" means:

> "a person who acts, assists any person to act or holds himself out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction".

It is important to understand that the private bailiff is merely a recovery agent of the original creditor and is not clothed with any official status as a peace officer or duly appointed officer of any court.

There were, at time of the study, 142 bailiffs on file with the registrar. When the lieutenant governor appoints bailiffs, on recommendation by the Minister of Consumer and Commercial Relations, those appointments are for life unless the registrar moves to revoke the registration. Each bailiff's appointment is usually effective in only one county.

Research identified a number of current issues regarding the Bailiffs Act:

1) There is a public misperception that a private bailiff, by nature of the title, is a court official.

Private bailiffs are of the view that the use of the "bailiff" title is essential to persuade the debtor to respond to the bailiff's requests. It should also be pointed out that there is an additional perception problem in that half of the applicants registered as private bailiffs are also court-appointed bailiffs (Courts of Justice Act);

2) The appointment and administration of private bailiffs under the act is a divided responsibility of the Ministry of the Attorney General and the Ministry of Consumer and Commercial Relations. The application for an appointment as a private bailiff is delivered to the sheriff (Ministry of the Attorney General) who conducts an examination and delivers the results of the examination to the Minister of Consumer and Commercial Relations. If they are acceptable, the Minister of Consumer and Commercial Relations then recommends the appointment of the private bailiff and the Ministry maintains control over the appointment documents. When a complaint against a private bailiff is lodged (a complaint may be forwarded to the Ministry of Consumer and Commercial Relations, and must then be re-directed to the Ministry of the Attorney General), the act stipulates that an investigation must be conducted by the sheriff and the findings delivered to the registrar. After considering the findings of the sheriff, the registrar may propose revoking the application of the private bailiff (subject to notice and hearing privileges available under the act);

3) The lifetime appointment of a private bailiff does not allow the registrar to monitor the private bailiff's activities. The private bailiff need only file his or her initial application and, provided that no complaints are registered, have no further dealings with the registrar. There have been situations where the registrar has presumed that a particular private bailiff was still active only to learn that the private bailiff died sometime ago;

4) The act does not provide any guidelines for a private bailiff in conducting his/her business, nor does it offer any policing provisions;

5) The fact that private bailiffs are appointed on a county by county basis creates problems in a mobile society, especially when personal property can be transferred by the debtor to another county;

6) Even though the act prohibits private bailiffs from engaging in the business of a collection agency, the reality is that private bailiffs will often receive cash or a cheque from a debtor rather than have property repossessed. Also, municipalities retain

the services of private bailiffs to collect tax arrears even though the Bailiffs Act and the Municipal Act do not permit private bailiffs to collect taxes.

7) The fee structure for bailiffs, under the Costs of Distress Act, has not been revised since 1962. There are no fixed fees with respect to other services rendered by private bailiffs and, accordingly, these tend to follow what the market will bear. As well, the Municipal Act does not provide for a fee to be charged by a private bailiff.

Proposed direction includes: change of name to "recovery agent"; lifting of the county limitation; requiring more frequent renewal of registration; regulation of direction regarding proper identification, removal, seizure and repossession or distress procedures; updated fee structures; and the introduction of exemptions to allow bailiffs to accept cash in certain situations.

The major recommendation was that administration of the act not continue to be a divided responsibility between two ministries, but be taken by one ministry or the other. Depending on which ministry would be responsible, additional directions were proposed. It was concluded that a stronger case could be made to have the Ministry of the Attorney General administer this piece of legislation.

C) The Paperback & Periodical Distributors Act

The Paperback & Periodical Distributors Act was enacted in July 1971 in response to a crisis that had been identified only a few months previously.

In early 1971, a certain American group (based in St. Louis) was attempting to acquire a number of Canadian companies involved in the distribution of paperbacks and periodicals in Ontario. The strong-arm practices of the group were the subject of public scrutiny and debate in the Ontario legislature. Allegations were made that the St. Louis group had "underworld" connections.

The practices of the American group so alarmed a royal commission established to review the book publishing industry that on June 8, 1971, the commission wrote an interim report recommending the urgent creation of legislation which would prevent foreign ownership and control of the paperback and periodical distributing businesses. The report was circulated in the Ministry of the Attorney General and the Ministry of Financialand Commercial Affairs and, within a few days, the Paperback and Periodical Distributors Act was drafted. First reading of the bill in the Ontario legislature was on June 14, 1971.

The act was to have an effective date of June 14, 1971. However, in the three to four days immediately preceding that date, the American group did, in fact, purchase two Canadian distributing companies. Second reading of the bill was on July 20, 1971 and third and final reading of the bill was on July 26, 1971.

The act addresses the ownership of paperback and periodical distributors in Ontario. No person shall carry on business as a distributor unless registered. Section 8 of the act states that an individual or partnership can only be registered if it meets certain Canadian residency requirements. Section 9 states that a corporation may be registered only if the corporation is incorporated in Canada and Canadian residents own 75% of the issued shares. Non-residents can own individually no more than 10% of the issued shares.

Distributors who were carrying on business prior to June 14, 1971 in violation of the residency requirements were allowed to continue. Under the act, the registrar of paperback and periodical distributors has an additional power to limit the registrant to carrying out business in defined territorial areas of Ontario, as designated by the Minister of Consumer and Commercial Relations. Registrations must be renewed on an annual basis.

The act had the desired effect of halting additional acquisitions by the St. Louis group. It should be noted in passing that, in 1975, the St. Louis organization sold all of its interests to a Canadian group.

Sixty-four wholesalers and distributors are presently registered under the act. In the early years of the legislation, the registrar designated business territories in Ontario for each distributor. However, territorial restrictions are no longer strictly enforced, so distributors are generally free to operate throughout the province. For the most part, the registrar's involvement has been limited to reviewing the annual registration documents, in order to ensure that no change in the ownership of distributor companies has occurred.

At present, it would appear that the act exists in spite of the absence of the circumstances that required its creation in the first place. The question may logically be asked as to whether the act remains relevant or whether it can now be repealed.

The act has served a useful purpose in maintaining Canadian control of the distributors of paperbacks and periodicals. Even though the act does not concern itself with the content of any paperback or periodical, it has given Canadian publishers access to Canadian distributors and accordingly, it is suggested that the arrangement has allowed for better marketing of Canadian publications. Distributors are responsible for store shelf displays, thereby ensuring visible Canadian publications. A decision to repeal the legislation may result in the loss of the indirect benefit the Canadian publishing industry has received as a result of the act. Local distributors would also be concerned about their ability to compete on an equal financial footing with larger foreign interests.

A similar argument may also be raised, as with the Discriminatory Business Practices Act, over why an act which has little to do with consumer protection and business-to-consumer transactions is being administered by the Ministry of Consumer and Commercial Relations. It is Canadian control of the distributors of paperbacks and periodicals that is the focus of the act; it is silent on any relationship between the distributor and the purchaser (consumer) of publications or specific business practices of the distributor. The question can therefore be raised as to whether another ministry should be responsible for administering the act.

If the act remains with the Ministry of Consumer and Commercial Relations, sections dealing with territorial regions should be repealed. Also, as will be discussed in more detail later in the report, proposed direction is to have all references to registrations, inspections and other regulatory procedures contained in one "generic" legislation and not duplicated in industry-specific acts. The general result may well be a very short piece of legislation dealing with the ownership requirements. (This significant reduction of statutory and regulatory text would also occur if the two previously discussed acts (the Bailiffs Act and the Discriminatory Business Practices Act), were to remain the administrative responsibility of the Ministry of Consumer and Commercial Relations.)

On the other hand, it may be more appropriate to transfer administration of the Paperback and Periodical Distributors Act to the Ministry of Culture and Communications. One of the objectives of that ministry, as set out in its act is:

> "to ensure the creative and participatory nature of cultural life in Ontario by assisting in the stimulation of cultural expression and cultural preservation."

More specifically, it should be noted that the Culture Division of the Ministry of Culture and Communications, together with the Ontario Development Corporation, administer the Cultural Agencies and Enterprises Book Publishing Program. That program enables Canadian-owned, Ontario-based book publishers to receive financial assistance from the provincial government, either through the guarantee of a loan made by a commercial lending institution or a rebate of interest paid on such loans. It may well be that the Culture Division of the ministry would be the more appropriate group to monitor the distributors.